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INTERSTATE COMMERCE COMMISSION

CONDITIONAL SALE AGREEMENT

Dated as of January 15, 1975

Among

GENERAL MOTORS CORPORATION
(Electro-Motive Division),
FMC CORPORATION,
PULLMAN INCORPORATED (Pullman Standard division)
GENERAL ELECTRIC COMPANY,
PACCAR INC,
ACF INDUSTRIES, INCORPORATED

and

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY

CONDITIONAL SALE AGREEMENT dated as of January 15, 1975, among each of the corporations named in Item 1 of Schedule A hereto and THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, a Delaware corporation (hereinafter called the Railroad).

WHEREAS each of the corporations named in Item 1 of Schedule A hereto severally have agreed to construct, sell and deliver to the Railroad, and the Railroad has agreed to purchase, the equipment described in Schedule B hereto (hereinafter called the Equipment);

NOW, THEREFORE, in consideration of the mutual promises, covenants and agreements hereinafter set forth, the parties hereto do hereby agree as follows:

ARTICLE 1. Certain Definitions; Obligations of Builders Several; Additional Agreements. The term "Vendor", whenever used in this Agreement, means, before any assignment of any of their rights hereunder, the respective corporations named in Item 1 of Schedule A hereto and any successor or successors for the time being to their respective manufacturing properties and businesses, and, after any such assignment, both any assignee or assignees for the time being of such particular assigned rights as regards such rights, and also any assignor as regards any rights hereunder that are retained or excluded from any assignment. Whenever the term "Vendor" refers to a corporation named in Item 1 of Schedule A hereto, such term shall mean any or all such corporations, as the context may require. The term "Builder", whenever used in this Agreement, means, both before and after any such assignment, each of the respective corporations (as to the units of Equipment to be constructed by such corporation and sold hereunder) named in Item 1 of Schedule A hereto and any successor or successors for the time being to their respective manufacturing properties and businesses.

The rights and obligations of the Builders under this Agreement are several in accordance with their interests and not joint. Accordingly, whenever this Agreement, by the use of such designation as "the Vendor", "such Builder" or other similar term, confers a right or imposes an obligation upon any corporation named in Item 1 of Schedule A hereto or its successor, such right or obligation shall be

construed to accrue to or to be enforceable against only the specific corporation furnishing the units of Equipment giving rise to such right or obligation and its successors as herein provided.

Additional Agreements, if any, set forth in Schedule A hereto shall be deemed to be a part of this Agreement as fully as though set forth in full in this instrument.

ARTICLE 2. Construction and Sale. Pursuant to this Agreement, each Builder shall construct the units of the Equipment to be constructed by it as described in Schedule B hereto (such Equipment with respect to each Builder being hereinafter sometimes called its Equipment) and will sell and deliver to the Railroad, and the Railroad will purchase from such Builder and accept delivery of and pay for (as hereinafter provided), such Equipment, each unit of which shall be constructed in accordance with the specifications set forth therefor in Schedule B hereto and in accordance with such modifications thereof as may be agreed upon in writing between such Builder and the Railroad (which specifications and modifications, if any, are hereinafter called the Specifications). The design, quality and component parts of each unit of the Equipment shall conform, on the date of completion of manufacture of each thereof, to all Department of Transportation and Interstate Commerce Commission requirements and specifications and to all standards recommended by the Association of American Railroads reasonably interpreted as being applicable to equipment of the character of such units of the Equipment and each unit of the Equipment (except to the extent, if any, referred to in Schedule A hereto and/or in Article 8 hereof) will be new railroad equipment.

ARTICLE 3. Inspection and Delivery. Each Builder will deliver the units of its Equipment to the Railroad at the place or places specified in Schedule B hereto (or if Schedule B does not specify a place or places, at the place or places designated from time to time by the Railroad), freight charges, if any, prepaid, in accordance with the delivery schedule set forth in Schedule B hereto; provided, however, that no Builder shall have any obligation to deliver any unit of its Equipment hereunder at any time after the commencement of any proceedings specified in clause (c) or (d) of Article 16 hereof or if any event of default (as described in Article 16 hereof), or event which with lapse of time and/or demand would constitute such an event of default, shall have occurred.

Each Builder's obligation as to time of delivery is subject, however, to delays resulting from causes beyond the Builder's reasonable control, including but not limited to acts of God, acts of government such as embargoes, priorities and allocations, war or war conditions, riot or civil commotion, sabotage, strikes, differences with workmen, accidents, fire, flood, explosion, damage to plant, equipment or facilities, delays in receiving necessary materials or delays of carriers or subcontractors.

Notwithstanding the preceding provisions of this Article 3, any Equipment not delivered, accepted and settled for pursuant to Article 4 hereof on or before August 31, 1975, shall be excluded herefrom. If any unit or units of Equipment shall be excluded from this Agreement pursuant to the immediately preceding sentence, the Builder or Builders of such unit or units and the Railroad shall execute an agreement supplemental hereto limiting this Agreement to the units of Equipment not so excluded herefrom. If a Builder's failure to deliver Equipment so excluded from this Agreement resulted from one or more of the causes set forth in the immediately preceding paragraph, the Railroad shall nevertheless be obligated to accept such Equipment and pay the full purchase price therefor, determined as provided in this Agreement, if and when such Equipment shall be completed and delivered by such Builder, such payment to be in cash on the delivery of such Equipment, either directly or, in case the Railroad shall arrange therefor, by means of a conditional sale agreement, equipment trust or such other appropriate method of financing as the Railroad shall determine and as shall be reasonably acceptable to such Builder.

During construction, the Equipment shall be subject to inspection and approval by the authorized inspectors of the Railroad and each Builder shall grant to such authorized inspectors reasonable access to its plant. Each Builder agrees to inspect all materials used in the construction of the Equipment in accordance with the standard quality control practices of such Builder. Upon completion of each unit or of a number of units of the Equipment, such unit or units shall be presented to an inspector of the Railroad for inspection at the place specified for delivery of such unit or units, and if each such unit conforms to the Specifications, requirements and standards applicable thereto, such inspector or an authorized representative of the Railroad shall execute and deliver to such Builder a certificate of acceptance (hereinafter called the Certificate of Accep-

tance) stating that such unit or units have been inspected and accepted on behalf of the Railroad and are marked in accordance with Article 7 hereof; provided, however, that such Builder shall not thereby be relieved of its warranty referred to in Article 14 hereof.

On delivery of each such unit hereunder at the place specified for delivery, the Railroad will assume the responsibility and risk of, and shall not be released from its obligations hereunder in the event of, any damage to or the destruction or loss of such unit; provided, however, that such delivery shall not thereby relieve a Builder of its warranty referred to in Article 14 hereof.

ARTICLE 4. Purchase Price and Payment. The base price or prices per unit of the Equipment are set forth in Schedule B hereto. Such base price or prices are subject to such increase or decrease as may be agreed to by the Builder thereof and the Railroad. The term "Purchase Price" as used herein shall mean the base price or prices as so increased or decreased. If the aggregate Purchase Price of Equipment for which settlement has been made under this Agreement is in an amount not less than $50,250,000, the Railroad may, at its option, exclude from this Agreement any unit or units of Equipment for which settlement has not been made and the appropriate Builder or Builders of such unit or units (and any assignee of such Builder or Builders) shall, upon request of the Railroad enter into an agreement supplemental hereto evidencing such exclusion. The Railroad agrees to purchase any such unit or units so excluded from this Agreement and to pay the Builder in cash on the date such unit or units would otherwise have been settled for under this Agreement either directly, or, if the Builder and the Railroad shall mutually agree, by means of a conditional sale, equipment trust or other appropriate method of financing.

For the purpose of making settlement, the Equipment shall be divided into such number of groups (not more than three) of units of the Equipment, delivered to and accepted by the Railroad (each such group being hereinafter called a Group), as the respective Builder, the Railroad and the Vendor may agree to.

The Railroad hereby acknowledges itself to be indebted to the Vendor in the amount of, and hereby promises to pay in cash to the Vendor at such place as the Vendor

may designate, the Purchase Price of the Equipment, as follows:

(a) on each Closing Date (as hereinafter defined) the amount, if any, by which (x) the aggregate Purchase Price of all units of the Equipment for which settlement has theretofore and is then being made, as stated in the invoice or invoices presented in respect of such Closing Date (said invoiced prices being hereinafter called the Invoiced Purchase Prices), exceeds (y) the sum of $50,000,000 and any amount or amounts previously paid or payable with respect to the Invoiced Purchase Prices pursuant to this subparagraph (a); and

(b) in 15 consecutive equal (to the nearest multiple of $1,000, except for appropriate adjustment of the final instalment in case the amount payable pursuant to this subparagraph (b) shall not, when divided by 15, result in an amount ending in a multiple of $1,000) annual instalments, as hereinafter provided, an amount equal to the aggregate of the Invoiced Purchase Prices for all the Equipment less the amount paid or payable with respect thereto pursuant to subparagraph (a) of this paragraph (the aggregate of said instalments being hereinafter called the Conditional Sale Indebtedness).

In the event that on any Closing Date the final Purchase Price of any Group has not been finally determined, the invoice presented may be a preliminary invoice, subject to upward adjustment upon determination of the final Purchase Price, and a supplemental invoice may be presented by the Builder at least ten days prior to any subsequent Closing Date for settlement on such subsequent Closing Date for any increase in the Purchase Price; it being understood and agreed by the Builders that any preliminary invoice or invoices presented by the Builders in respect of any Group shall be in amount not in excess of the final Purchase Price of such Group.

The instalments of the Conditional Sale Indebtedness payable pursuant to subparagraph (b) of the third paragraph of this Article 4 shall be payable annually on May 15 in each year commencing on May 15, 1976, to and including May 15, 1990. The unpaid portion of the Conditional Sale Indebtedness shall bear interest from the respective Closing Dates on which such indebtedness was incurred at the rate of 9-3/4% per annum. Such interest shall be payable, to the extent accrued, on May 15 and November 15 in each year, commencing May 15, 1975.

The term "Closing Date" with respect to any Group of the Equipment shall mean March 3, 1975, and such other dates (after March 3, 1975, and prior to August 31, 1975,) not more than 10 business days following presentation by a Builder to the Railroad of the invoice and the Certificate or Certificates of Acceptance for such Group, as shall be fixed by the Railroad by written notice delivered to the Vendor at least six business days prior to the Closing Date designated therein; it being understood and agreed, however, that the aggregate Purchase Price of all Equipment settled for on Closing Dates prior to April 1, 1975, shall not exceed $26,000,000. The term "business days" as used herein means calendar days, excluding Saturdays, Sundays and any other day on which banking institutions in Chicago, Illinois, or New York, New York, are authorized to remain closed.

All interest under this Agreement shall be calculated on the basis of a 360-day year of twelve 30-day months.

The Railroad will pay, to the extent legally enforceable, interest at the rate of 10-3/4% per annum upon all amounts remaining unpaid after the same shall have become due and payable pursuant to the terms hereof, anything herein to the contrary notwithstanding.

All payments provided for in this Agreement shall be made in such coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts. Except as provided in Article 8 hereof, the Railroad shall not have the privilege of prepaying any instalment of its indebtedness hereunder prior to the date it becomes due.

In the event the Vendor, pursuant to Article 15 hereof, assigns the right to receive the payments herein provided to be made by the Railroad, the assignee thereof may request the Railroad to make and the Railroad shall make such payments to it at such address as shall be supplied to the Railroad by the assignee.

ARTICLE 5. Taxes. All payments to be made by the Railroad hereunder will be free of expense to the Vendor for collection or other charges and will be free of expense to the Vendor with respect to the amount of any local, state, federal or foreign taxes (other than net income, gross receipts [except gross receipts taxes in the nature of or in lieu of sales or use taxes], excess profits and similar taxes) or license fees, assessments, charges, fines or penal-

ties hereafter levied or imposed upon or in connection with or measured by, this Agreement or any sale, use, payment, shipment, delivery or transfer of title under the terms hereof (all such expenses, taxes, license fees, assessments, charges, fines and penalties being hereinafter called impositions), all of which impositions the Railroad assumes and agrees to pay on demand. The Railroad will also pay promptly all impositions which may be imposed upon the Equipment delivered to it or for the use or operation thereof or upon the earnings arising therefrom or upon the Vendor solely by reason of its ownership thereof and will keep at all times all and every part of the Equipment free and clear of all impositions which might in any way affect the title of the Vendor or result in a lien upon any part of the Equipment; provided, however, that the Railroad shall be under no obligation to pay any impositions of any kind so long as it is contesting in good faith and by appropriate legal proceedings such impositions and the nonpayment thereof does not, in the opinion of the Vendor, adversely affect the property or rights of the Vendor in or to the Equipment or otherwise under this Agreement. If any such impositions shall have been charged or levied against the Vendor directly and paid by the Vendor, the Railroad shall reimburse the Vendor upon presentation of an invoice therefor, and any amounts so paid by the Vendor shall be secured by and under this Agreement; provided, however, that the Railroad shall not be obligated to reimburse the Vendor for any impositions so paid unless the Vendor shall have been legally liable with respect thereto (as evidenced by an opinion of counsel for the Vendor) or unless the Railroad shall have approved the payment thereof.

ARTICLE 6. Title to the Equipment. The Vendor shall and hereby does retain the full legal title to and property in the Equipment until the Railroad shall have made all its payments under this Agreement and shall have kept and performed all its agreements herein contained, notwithstanding the delivery of the Equipment to and the possession and use thereof by the Railroad as provided in this Agreement. Any and all additions to the Equipment and any and all replacements of the Equipment and of parts thereof and additions thereto shall constitute accessions to the Equipment and shall be subject to all the terms and conditions of this Agreement and included in the term "Equipment" as used in this Agreement.

Except as otherwise specifically provided in Article 8 hereof, when and only when the full indebtedness in

respect of the Purchase Price of the Equipment, together with interest and all other payments as herein provided, shall have been paid, and all the Railroad's obligations herein contained shall have been performed by the Railroad, absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Railroad without further transfer or action on the part of the Vendor. However, the Vendor, if so requested by the Railroad at that time, will (a) execute a bill or bills of sale for the Equipment transferring its title thereto and property therein to the Railroad, or upon its order, free of all liens, security interests and other encumbrances created or retained hereby and deliver such bill or bills of sale to the Railroad at its address referred to in Article 21 hereof, (b) execute and deliver at the same place, for filing, recording or depositing in all necessary public offices, such instrument or instruments in writing as may be necessary or appropriate in order then to make clear upon the public records the title of the Railroad to the to the Equipment and (c) pay to the Railroad any money paid to the Vendor pursuant to Article 8 hereof and not theretofore applied as therein provided. The Railroad hereby waives and releases any and all rights, existing or that may be acquired, in or to the payment of any penalty, forfeit or damages for failure to execute and deliver such bill or bills of sale or instrument or instruments or to file any certificate of payment in compliance with any law or statute requiring the filing of the same, except for failure to execute and deliver such bill or bills of sale or instrument or instruments or to file such certificate within a reasonable time after written demand by the Railroad.

ARTICLE 7. Marking of the Equipment. The Railroad will cause each unit of the Equipment to be kept numbered with its identifying number as set forth in Schedule B hereto, or in the case of Equipment not there listed such identifying number as shall be set forth in any amendment or supplement hereto extending this Agreement to cover such Equipment, and will keep and maintain, plainly, distinctly, permanently and conspicuously marked on each side of each unit, in letters not less than one inch in height, the words "Ownership subject to a Security Interest Filed under the Interstate Commerce Act, Section 20c" or other appropriate markings approved by the Vendor, with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the Vendor's title to and property in the Equipment and its rights under this Agreement. The

Railroad will not place any such unit in operation or exercise any control or dominion over the same until such markings have been made thereon and will replace promptly any such markings which may be removed, defaced or destroyed. The Railroad will not change the number of any unit of the Equipment except in accordance with a statement of new number or numbers to be substituted therefor, which statement previously shall have been filed with the Vendor by the Railroad and filed, recorded and deposited by the Railroad in all public offices where this Agreement shall have been filed, recorded and deposited.

Except as provided in the immediately preceding paragraph, the Railroad will not allow the name of any person, association or corporation to be placed on any unit of the Equipment as a designation that might be interpreted as a claim of ownership; provided, however, that the Railroad may cause the Equipment to be lettered with the names or initials or other insignia of the Railroad or its affiliates.

ARTICLE 8. Casualty Occurrences. In the event that any unit of the Equipment shall be worn out, lost, stolen, destroyed, irreparably damaged or otherwise rendered permanently unfit for use from any cause whatsoever, or taken or requisitioned by condemnation or otherwise (such occurrences being hereinafter called Casualty Occurrences), the Railroad shall promptly (after it has knowledge of such Casualty Occurrence) and fully inform the Vendor in regard thereto. When the aggregate Casualty Value (as defined herein) of all units having suffered a Casualty Occurrence (exclusive of units having suffered a Casualty Occurrence with respect to which a payment shall have been made to the Vendor pursuant to this Article 8) hereunder shall exceed $250,000 (or such lesser amount as the Railroad may elect), the Railroad, within 90 days after the Railroad has knowledge of such event, shall file with the Vendor a certificate of an officer of the Railroad setting forth the Casualty Value of each unit of the Equipment having suffered a Casualty Occurrence and shall pay to the Vendor a sum equal to the aggregate Casualty Value as of the date of such payment of such unit or units of the Equipment having suffered a Casualty Occurrence, together with interest on such sum so being prepaid accrued to the date of such prepayment, but without premium, (the Railroad hereby agreeing to make such payment of accrued interest to the Vendor at the time it makes payment of such Casualty Value to the Vendor); provided, however, if and so long as no event of default

shall have occurred and be continuing hereunder, in lieu of making all or any portion of such payment to the Vendor, the Railroad may, on or before the expiration of such 90-day period, cause to be transferred to the Vendor a replacement unit or units of standard gauge railroad equipment (other than passenger or work equipment of types other than locomotives) and receive credit against the Casualty Value payment it would otherwise have been required to make in an amount equal to the value threof. The value of any unit or units of replacement equipment shall be equal to the cost thereof, if new, as specified in the invoice therefor delivered to the Vendor or, if not new, the lesser of (y) the fair market value thereof or (z) the original cost thereof less depreciation at a rate equal to 1/15th of such cost for each year in service, all as set forth in a certificate of an officer of the Railroad delivered to the Vendor at the time of such replacement. Any unit of replacement equipment shall have a remaining useful life (as evidenced by a certificate of an operating officer at the Railroad) at least as long as that which the Equipment being replaced would have had but for the Casualty Occurrence. In case any money is applied to prepay indebtedness, it shall be so applied, together with the interest due thereon, on the business day next following receipt by the Vendor of the appropriate payment, to reduce instalments of the aggregate Conditional Sale Indebtedness thereafter falling due in the inverse order of maturity thereof without premium.

The Casualty Value of each unit of the Equipment (other than a replacement unit) shall be deemed to be that amount which bears the same ratio to the original Purchase Price thereof (less, in the event that the Railroad shall have made any payment or payments under the provisions of subparagraph (a) of the third paragraph of Article 4 hereof, an amount which bears the same ratio to the aggregate of all such payments as the original Purchase Price of such unit bears to the original aggregate Purchase Price of all the Equipment) as the unpaid Conditional Sale Indebtedness (without giving effect to any prepayments then or theretofore made pursuant to this Article 8) as of the date payment is made with respect to such Casualty Occurrence bears to the original Conditional Sale Indebtedness. The Casualty Value of each replacement unit shall be deemed to be that amount which bears the same ratio to the portion of the cost thereof paid by the Vendor as the unpaid Conditional Sale Indebtedness ness (without giving effect to any prepayments then or theretofore made pursuant to this Article 8) as of the date payment

is made with respect to such Casualty Occurrence bears to the unpaid Conditional Sale Indebtedness (without giving effect to any such prepayments) as of the date of acquisition by the Vendor of such replacement unit.

The Railroad will cause any replacement unit or units to be marked as provided in Article 7 hereof. Any and all such replacements of Equipment shall constitute accessions to the Equipment and shall be subject to all appropriate terms and conditions of this Agreement as though part of the original Equipment delivered hereunder and shall be included in the term "Equipment" as used in this Agreement. Title to all such replacement units shall be free and clear of all liens and encumbrances except the liens permitted by the second paragraph of Article 12 hereof and shall be taken initially and shall remain in the name of the Vendor subject to the provisions hereof, and the Railroad shall execute, acknowledge, deliver, file, record or deposit all such documents and do any and all such acts as may be necessary to cause such replacement units to come under and be subject to this Agreement. All such replacement units shall be guaranteed and warranted in like manner as is customary at the time for similar equipment. Whenever the Railroad shall cause to be transferred to the Vendor a unit or units of replacement Equipment, the Railroad shall deliver to the Vendor an executed counterpart of an opinion of counsel covering the matters set forth in this paragraph.

In order to facilitate the sale or other disposition of any Equipment suffering a Casualty Occurrence, in respect of which the Railroad shall have paid to the Vendor the Casualty Value and/or shall have caused to be transferred to the Vendor a unit or units of replacement Equipment, the Vendor shall, upon request of the Railroad, execute and deliver to the Railroad or the Railroad's vendee, assignee or nominee, a bill of sale (without warranties) for such Equipment, and such other documents as may be required to release such Equipment from the terms and scope of this Agreement, in such form as may be reasonably requested by the Railroad.

The Railroad will at all times prior to the payment in full of the Conditional Sale Indebtedness together with interest thereon and all other payments required hereby, at its own expense, cause to be carried and maintained insurance in respect of the Equipment consisting of locomotives at the time subject hereto, and public liability insurance,

in amounts and against risks customarily insured against by railroad companies on similar equipment, and in any event in amounts and against risks comparable to those insured against by the Railroad on equipment owned by it; provided, however, that the Railroad may act as self-insurer in respect of losses and damage not exceeding $3,000,000 in respect of any single occurrence.

ARTICLE 9. Maintenance; Compliance with Laws and Rules. The Railroad will at all times maintain the Equipment or cause the Equipment to be maintained in good order and repair at its own expense.

During the term of this Agreement, the Railroad will at all times comply in all respects with all laws of the jurisdictions in which its operations involving the Equipment may extend, with the interchange rules of the Asociation of American Railroads and with all lawful rules of the Department of Transportation, Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Equipment, to the extent that such laws and rules affect the title, operation or use of the Equipment, and in the event that such laws or rules require any alteration, replacement or addition of any part on any unit of the Equipment, the Railroad will conform therewith, at its own expense; provided, however, that the Railroad may, in good faith, contest the validity or application of any such law or rule in any reasonable manner which does not, in the opinion of the Vendor, adversely affect the property or rights of the Vendor under this Agreement.

ARTICLE 10. Reports and Inspections. On or before March 31 in each year, commencing with the calendar year 1976, the Railroad shall furnish to the Vendor an accurate statement signed by an officer of the Railroad (a) setting forth as at the preceding December 31 the amount, description and numbers of all units of the Equipment that have suffered a Casualty Occurrence during the preceding calendar year (or since the date of this Agreement in the case of the first such statement) or that have been withdrawn from use pending repairs (other than running repairs) and such other information regarding the condition and state of repair of the Equipment as the Vendor may reasonably request and (b) stating that, in the case of all Equipment repaired or repainted during the period covered by such statement, the numbers and markings required by Article 7 hereof have

been preserved or replaced. During the term of this Agreement, the Vendor shall have the right, by its agents, to inspect the Equipment and the Railroad's records with respect thereto at such times and locations as the Vendor may reasonably request.

The Railroad shall furnish (i) as soon as available and in any event within 60 days after the end of each quarterly period, except the last, of each fiscal year, a balance sheet of the Railroad (as filed with the Interstate Commerce Commission (hereinafter called the ICC)) as at the end of such period, and an income statement of the Railroad as filed with the ICC for the period beginning on the first day of such fiscal year and ending on the date of such balance sheet, setting forth comparative figures for the corresponding period of the preceding fiscal year, all in reasonable detail and certified by the principal accounting officer of the Railroad, and (ii) as soon as available and in any event within 120 days after the end of each fiscal year, a copy of the Railroad's annual report as filed with the ICC, which shall include the balance sheet, income statement and statement of retained income of the Railroad certified by the principal accounting officer of the Railroad and which shall be accompanied by a letter from the independent accountants for Santa Fe Industries, Inc., the parent of the Railroad, stating that such financial statements, restated to generally accepted accounting principles, were included in the certified consolidated financial statement of Santa Fe Industries, Inc., and that such certified financial statements are not qualified with respect to the Railroad and, in the event a restatement to generally accepted accounting principles is required, such letter shall be accompanied by a schedule which shall describe such restatement in reasonable detail.

ARTICLE 11. Possession and Use. The Railroad, so long as an event of default shall not have occurred under this Agreement and be continuing, shall be entitled to the possession of the Equipment and the use thereof upon the lines of railroad owned or operated by it either alone or jointly with others and whether under lease or otherwise, or upon the lines of railroad owned or operated by any railroad company controlled by, or under common control with, the Railroad, or over which it has trackage rights, or upon connecting and other carriers in the usual interchange of traffic, from and after delivery of the Equipment by the Builder to the Railroad, but only upon and subject to all the terms and conditions of this Agreement.

ARTICLE 12. Prohibition Against Liens. The Railroad will pay or discharge any and all sums claimed by any party from, through or under the Railroad or its successors or assigns which, if unpaid, might become a lien, charge or security interest on the Equipment, or any unit thereof, equal or superior to the Vendor's title thereto or property therein; provided, however, that the Railroad shall be under no obligation to pay or discharge any such claim so long as it is contesting in good faith and by appropriate legal proceedings such claim and the nonpayment thereof does not, in the opinion of the Vendor, adversely affect the property or rights of the Vendor in or to the Equipment or otherwise under this Agreement. Any amounts paid by the Vendor in discharge of liens, charges or security interests upon the Equipment shall be secured by and under this Agreement.

This covenant will not be deemed breached by reason of liens for taxes, assessments or governmental charges or levies, in each case not due and delinquent, or undetermined or inchoate materialmen's, mechanics', workmen's, repairmen's or other like liens arising in the ordinary course of business and, in each case, not delinquent.

ARTICLE 13. Railroad's Indemnities. The Railroad agrees to indemnify, protect and hold harmless the Vendor from and against all losses, damages, injuries, liabilities, claims and demands whatsoever, regardless of the cause thereof, and expenses in connection therewith, including counsel fees, arising out of retention by the Vendor of title to the Equipment, the use and operation thereof by the Railroad during the period when title thereto remains in the Vendor or the transfer of title to the Equipment by the Vendor pursuant to any of the provisions of this Agreement, except, however, any losses, damages, injuries, liabilities, claims and demands whatsoever arising out of any tort, breach of warranty or failure to perform any covenant hereunder by any Builder. This covenant of indemnity shall continue in full force and effect notwithstanding the full payment of all sums due under this Agreement, or the satisfaction, discharge or termination of this Agreement in any manner whatsoever.

ARTICLE 14. Patent Indemnities; Builder's Warranty of Material and Workmanship. Except in cases of articles or materials specified by the Railroad and not manufactured by a Builder and in cases of designs, systems, processes, formulae or combinations specified by the Railroad and not

developed or purported to be developed by any Builder, each Builder agrees to indemnify, protect and hold harmless the Railroad from and against any and all liability, claims, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Railroad, its assigns or the users of its respective Equipment because of the use in or about the construction or operation of any of the Equipment of any design, system, process, formula, combination, article or material which infringes or is claimed to infringe on any patent or other right. The Railroad likewise will indemnify, protect and hold harmless the Vendor from and against any and all liability, claims, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Vendor because of the use in or about the construction or operation of any of the Equipment of any article or material specified by the Railroad and not manufactured by a Builder or of any design, system, process, formula or combination specified by the Railroad and not developed or purported to be developed by a Builder which infringes or is claimed to infringe on any patent or other right. Each Builder agrees to and hereby does, to the extent legally possible without impairing any claim, right or cause of action hereinafter referred to, assign, set over and deliver to the Railroad every claim, right and cause of action which such Builder has or hereafter shall have against the seller or sellers of any designs, systems, processes, formulae, combinations, articles or materials specified by the Railroad and purchased or otherwise acquired by such Builder for use in or about the construction or operation of any of the Equipment on the ground that any such design, system, process, formula, combination, article or material or operation thereof infringes or is claimed to infringe on any patent or other right. Each Builder further agrees to execute and deliver to the Railroad or the users of the Equipment all and every such further assurance as may be reasonably requested by the Railroad more fully to effectuate the assignment and delivery of every such claim, right and cause of action. Each Builder will give notice to the Railroad of any claim known to such Builder from which liability may be charged against the Railroad hereunder and the Railroad will give notice to the appropriate Builder of any claim known to the Railroad from which liability may be charged against any Builder hereunder. Such covenants of indemnity shall continue in full force and effect notwithstanding the full payment of all sums due under this Agreement, or the satisfaction,

discharge or termination of this Agreement in any manner whatsoever.

Each Builder's warranty of material and workmanship is set forth in Schedule A hereto.

ARTICLE 15. Assignments. The Railroad will not sell, assign, transfer or otherwise dispose of its rights under this Agreement or, except as provided in Article 11 hereof, transfer the right to possession of any unit of the Equipment without first obtaining the written consent of the Vendor. A sale, assignment, transfer or disposition to a railroad company organized under the laws of the United States of America or any of the states thereof which shall acquire all or substantially all the lines of railroad of the Railroad, and which, by execution of an appropriate instrument satisfactory to the Vendor, shall assume and agree to perform each of, and all, the obligations and covenants of the Railroad under this Agreement, shall not be deemed a breach of this covenant.

All or any of the rights, benefits and advantages of the Vendor under this Agreement, including the right to receive the payments herein provided to be made by the Railroad, may be assigned by the Vendor and reassigned by any assignee at any time or from time to time. No such assignment shall subject any assignee to, or relieve any Builder from, any of the obligations of such Builder to construct and deliver the Equipment in accordance with this Agreement or to respond to its respective warranties and indemnities contained or referred to in Article 14 hereof, or relieve the Railroad of any of its obligations to such Builders under Articles 2, 3, 4, 5, 13 and 14 hereof, Schedule A hereto and this Article 15 or of any other obligation which, according to its terms or context, is intended to survive an assignment.

Upon any such assignment either the assignor or the assignee shall give written notice to the Railroad, together with a counterpart or copy of such assignment, stating the identity and post office address of the assignee, and such assignee shall by virtue of such assignment acquire all the assignor's right, title and interest in and to the Equipment and this Agreement, or in and to a portion thereof, as the case may be, subject only to such reservations as may be contained in such assignment. From and after the receipt by the Railroadd of the notification of any such

assignment, all payments thereafter to be made by the Railroad under this Agreement shall, to the extent so assigned, be made to the assignee in such manner as it may direct.

The Railroad recognizes that it is the custom of railroad equipment manufacturers to assign conditional sale agreements and understands that the assignment of this Agreement, or of some of or all the rights of the Vendor hereunder, is contemplated. The Railroad expressly represents, for the purpose of assurance to any person, firm or corporation considering the acquisition of this Agreement or of all or any of the rights of the Vendor hereunder and for the purposes of inducing such acquisition, that in the event of such assignment by the Vendor as hereinbefore provided, the rights of such assignee to the entire unpaid indebtedness in respect of the Purchase Price or such part thereof as may be assigned, together with interest thereon, as well as any other rights hereunder which may be so assigned, shall not be subject to any defense, setoff, counterclaim or recoupment whatsoever arising out of any breach of any obligation of a Builder with respect to the Equipment or the manufacture, construction, delivery or warranty thereof, or with respect to any indemnity herein contained, nor subject to any defense, setoff, counterclaim or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to the Railroad by a Builder. Any and all such obligations, howsoever arising, shall be and remain enforceable by the Railroad against and only against the respective Builders.

The Railroad will (a) in connection with each settlement for the Equipment subsequent to such assignment, deliver to the assignee, at least five business days prior to the Closing Date for the Group fixed in the notice by the Railroad, all documents required by the terms of such assignment to be delivered to such assignee in connection with such settlement, in such number of counterparts or copies as may reasonably be requested, except for any opinion of counsel for such assignee, and (b) furnish to such assignee such number of counterparts of any other certificate or paper required by the Vendor as may reasonably be requested.

If this Agreement shall have been assigned by the Builders and the assignee shall not make payment to a Builder with respect to units of its Equipment as provided in the instrument making such assignment, such Builder will promptly notify the Railroad of such event and, if such

amount shall not have been previously paid by such assignee, the Railroad will, not later than 90 days after the date such payment was due, pay or cause to be paid to such Builder the aggregate unpaid Purchase Price of such units of its Equipment, together with interest from the day such payment was due to the date of payment by the Railroad at the highest prime rate of interest charged by any of the four New York City banks having the largest total assets, in effect on the date such payment was due.

ARTICLE 16. Defaults. In the event that any one or more of the following events of default shall occur and be continuing, to wit:

(a) the Railroad shall fail to pay in full any indebtedness in respect of the Purchase Price of the Equipment or any other sum payable by the Railroad as provided in this Agreement within ten days after payment thereof shall be due hereunder; or

(b) the Railroad shall, for more than 30 days after the Vendor shall have demanded in writing performance thereof, fail or refuse to comply with any covenant, agreement, term or provision of this Agreement, or of any agreement entered into concurrently herewith relating to the financing of the Equipment on its part to be kept or performed or to make provision satisfactory to the Vendor for such compliance; or

(c) a petition for reorganization under Section 77 of the Bankruptcy Act, as now constituted or as said Section 77 may be hereafter amended, shall be filed by or against the Railroad and, unless such petition shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Railroad under this Agreement shall not have been (and shall not continue to have been) duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees appointed (whether or not subject to ratification) in such proceedings in such manner that such obligations shall have the same status as obligations incurred by such trustee or trustees, within 30 days after such appointment, if any, or 60 days after such petition shall have been filed, whichever shall be earlier; or

(d) any other proceedings shall be commenced by or against the Railroad for any relief under any bankruptcy or insolvency law, or law relating to the relief of debtors, readjustments of indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which does not permit any readjustment of the indebtedness payable hereunder), and, unless such proceedings shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Railroad under this Agreement shall not have been (and shall not continue to have been) duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed (whether or not subject to ratification) for the Railroad or for its property in connection with any such proceedings in such manner that such obligations shall have the same status as obligations incurred by such trustee or trustees or receiver or receivers, within 30 days after such appointment, if any, or 60 days after such proceedings shall have been commenced, whichever shall be earlier; or

(e) the Railroad shall make or suffer any unauthorized assignment or transfer of this Agreement or any interest herein or any unauthorized transfer of the right to possession of any unit of the Equipment;

then at any time after the occurrence of such an event of default the Vendor may, upon written notice to the Railroad and upon compliance with any mandatory legal requirements then in force and applicable to such action by the Vendor, declare (hereinafter called a Declaration of Default) the entire indebtedness in respect of the Purchase Price of the Equipment, together with the interest thereon then accrued and unpaid, immediately due and payable, without further demand, and thereafter the aggregate of the unpaid balance of such indebtedness and interest shall bear interest from the date of such Declaration of Default at the rate per annum specified in Article 4 hereof as being applicable to amounts remaining unpaid after becoming due and payable, to the extent legally enforceable. The Vendor shall thereupon be entitled to recover judgment for the entire unpaid balance of the indebtedness in respect of the Purchase Price of the Equipment so payable, with interest as aforesaid, and to collect such judgment out of any property of

the Railroad wherever situated. The Railroad shall promptly notify the Vendor of any event which has come to its attention which constitutes, or which with the giving of notice and/or lapse of time could constitute, an event of default under this Agreement.

The Vendor may at its election waive any such event of default and its consequences and rescind and annul any Declaration of Default by notice to the Railroad in writing to that effect, and thereupon the respective rights of the parties shall be as they would have been if no such event of default had occurred and no Declaration of Default had been made. Notwithstanding the provisions of this paragraph, it is expressly understood and agreed by the Railroad that time is of the essence of this Agreement and that no such waiver, rescission or annulment shall extend to or affect any other or subsequent default or impair any rights or remedies consequent thereon.

ARTICLE 17. Remedies. At any time during the continuance of a Declaration of Default, the Vendor may, subject to compliance with any mandatory legal requirements then in force and applicable to the action to be taken by the Vendor, take or cause to be taken by its agent or agents immediate possession of the Equipment, or one or more of the units thereof, without liability to return to the Railroad any sums theretofore paid and free from all claims whatsoever, except as hereinafter in this Article 17 expressly provided, and may remove the same from possession and use of the Railroad or any other person and for such purpose may enter upon the Railroad's premises or any other premises where the Equipment may be located and may use and employ in connection with such removal any supplies, services and aids and any available trackage and other facilities or means of the Railroad.

In case the Vendor shall demand possession of the Equipment pursuant to this Agreement and shall reasonably designate a point or points upon the premises of the Railroad for the delivery of the Equipment to the Vendor, the Railroad shall, at its own expense, forthwith and in the usual manner (including, but not by way of limitation, giving prompt telegraphic and written notice to the Association of American Railroads and all railroads to which any part of the Equipment has been interchanged to return the Equipment so interchanged), cause (a) the Equipment to be moved to such point or points on its lines as shall

be designated by the Vendor and shall there deliver the Equipment or cause it to be delivered to the Vendor and (b) the Equipment to be moved to such interchange point or points of the Railroad as shall be designated by the Vendor upon any sale, lease or other disposal of all or any part of the Equipment by the Vendor. At the option of the Vendor, the Vendor may keep the Equipment on any of the lines or premises of the Railroad until the Vendor shall have leased, sold or otherwise disposed of the same, and for such purpose the Railroad agrees to furnish, without charge for rent or storage, the necessary facilities at any point or points selected by the Vendor reasonably convenient to the Railroad and, at the Railroad's risk, to permit inspection of the Equipment by the Vendor, the Vendor's representatives and prospective purchasers and users. This agreement to deliver the Equipment and furnish facilities as hereinbefore provided is of the essence of the agreement between the parties, and, upon application to any court of equity having jurisdiction in the premises, the Vendor shall be entitled to a decree against the Railroad requiring specific performance hereof. The Railroad hereby expressly waives any and all claims against the Vendor and its agent or agents for damages of whatever nature in connection with any retaking of any unit of the Equipment in any reasonable manner.

At any time during the continuance of a Declaration of Default, the Vendor (after retaking possession of the Equipment as hereinbefore in this Article 17 provided) may at its election and upon such notice as is hereinafter set forth retain the Equipment in satisfaction of the entire indebtedness in respect of the Purchase Price of the Equipment and make such disposition thereof as the Vendor shall deem fit. Written notice of the Vendor's election to retain the Equipment shall be given to the Railroad by telegram or registered mail, addressed as provided in Article 21 hereof, and to any other persons to whom the law may require notice, within 30 days after such Declaration of Default. In the event that the Vendor should elect to retain the Equipment and no objection is made thereto within the 30-day period described in the second proviso below, all the Railroad's rights in the Equipment shall thereupon terminate and all payments made by the Railroad may be retained by the Vendor as compensation for the use of the Equipment by the Railroad; <u>provided, however</u>, that if the Railroad, before the expiration of the 30-day period described in the proviso below,

should pay or cause to be paid to the Vendor the total unpaid balance of the indebtedness in respect of the Purchase Price of the Equipment, together with interest thereon accrued and unpaid and all other payments due under this Agreement as well as expenses of the Vendor in retaking possession of, removing and storing the Equipment and the Vendor's reasonable attorneys' fees, then in such event absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Railroad; provided, further, that if the Railroad or any other persons notified under the terms of this paragraph object in writing to the Vendor within 30 days from the receipt of notice of the Vendor's election to retain the Equipment, then the Vendor may not so retain the Equipment, but shall sell, lease or otherwise dispose of it or continue to hold it pending sale, lease or other disposition as hereinafter provided or as may otherwise be permitted by law. If the Vendor shall have given no notice to retain as hereinabove provided or notice of intention to dispose of the Equipment in any other manner, it shall be deemed to have elected to sell the Equipment in accordance with the provisions of this Article 17.

At any time during the continuance of a Declaration of Default, the Vendor, with or without retaking possession thereof, at its election and upon reasonable notice to the Railroad and to any other persons to whom the law may require notice of the time and place, may sell the Equipment, or any unit thereof, free from any and all claims of the Railroad or any other party claiming from, through or under the Railroad, at law or in equity, at public or private sale and with or without advertisement as the Vendor may determine; provided, however, that if, prior to such sale and prior to the making of a contract for such sale, the Railroad should tender full payment of the total unpaid balance of the indebtedness in respect of the Purchase Price of the Equipment, together with interest thereon accrued and unpaid and all other payments due under this Agreement as well as expenses of the Vendor in retaking possession of, removing, storing, holding and preparing the Equipment for, and otherwise arranging for, the sale and the Vendor's reasonable attorneys' fees, then in such event absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Railroad. The proceeds of such sale, less the attorneys' fees and any other expenses incurred by the Vendor in retaking possession of, removing, storing,

holding, preparing for sale and selling the Equipment, shall be credited on the amount due to the Vendor under the provisions of this Agreement.

Any sale hereunder may be held or conducted at such place or places and at such time or times as the Vendor may specify, in one lot and as an entirety or in separate lots and without the necessity of gathering at the place of sale the property to be sold, and in general in such manner as the Vendor may determine. The Vendor or the Railroad may bid for and become the purchaser of the Equipment, or any unit thereof, so offered for sale. The Railroad shall be given written notice of such sale not less than ten days prior thereto, by telegram or registered mail addressed to the Railroad as provided in Article 21 hereof. If such sale shall be a private sale (which shall be deemed to mean only a sale where an advertisement for bids has not been published in a newspaper of general circulation or a sale where less than 40 railroads have been solicited in writing to submit bids), it shall be subject to the right of the Railroad to purchase or provide a purchaser, within ten days after notice of the proposed sale price, at the same price offered by the intending purchaser or a better price. In the event that the Vendor shall be the purchaser of the Equipment, it shall not be accountable to the Railroad (except to the extent of surplus money received as hereinafter provided in this Article 17), and in payment of the purchase price therefor the Vendor shall be entitled to have credited on account thereof all or any part of the sums due to the Vendor from the Railroad hereunder. From and after the date of any such sale, the Railroad shall pay to the Vendor the per diem interchange for each unit of Equipment which shall not have been assembled, as hereinabove provided, by the date of such sale for each day from the date of such sale to the date of delivery to the Purchaser at such sale.

Each and every power and remedy hereby specifically given to the Vendor shall be in addition to every other power and remedy hereby specifically given or now or hereafter existing at law or in equity, and each and every power and remedy may be exercised from time to time and simultaneously and as often and in such order as may be deemed expedient by the Vendor. All such powers and remedies shall be cumulative, and the exercise of one shall not be deemed a waiver of the right to exercise any other or others. No delay or omission of the Vendor in the exercise of any such power or

remedy and no renewal or extension of any payments due hereunder shall impair any such power or remedy or shall be contrued to be a waiver of any default or an acquiescence therein. Any extension of time for payment hereunder or other indulgence duly granted to the Railroad shall not otherwise alter or affect the Vendor's rights or the Railroad's obligations hereunder. The Vendor's acceptance of any payment after it shall have become due hereunder shall not be deemed to alter or affect the Railroad's obligations or the Vendor's rights hereunder with respect to any subsequent payments or default therein.

If, after applying all sums of money realized by the Vendor under the remedies herein provided, there shall remain any amount due to it under the provisions of this Agreement, the Railroad shall pay the amount of such deficiency to the Vendor upon demand, together with interest from the date of such demand to the date of payment by the Railroad at the rate per annum set forth in Article 4 hereof applicable to amounts remaining unpaid after becoming due and payable. If the Railroad shall fail to pay such deficiency, the Vendor may bring suit therefor and shall be entitled to recover a judgment therefor against the Railroad. If, after applying as aforesaid all sums realized by the Vendor, there shall remain a surplus in the possession of the Vendor, such surplus shall be paid to the Railroad.

The Railroad will pay all reasonable expenses, including attorneys' fees, incurred by the Vendor in enforcing its remedies under the terms of this Agreement. In the event that the Vendor shall bring any suit to enforce any of its rights hereunder and shall be entitled to judgment, then in such suit the Vendor may recover reasonable expenses, including attorneys' fees, and the amount thereof shall be included in such judgment.

The foregoing provisions of this Article 17 are subject in all respects to all mandatory legal requirements at the time in force and applicable thereto.

Article 18. Applicable State Laws. Any provision of this Agreement prohibited by any applicable law of any jurisdiction (which is not overridden by applicable federal law) shall as to such jurisdiction be ineffective, without modifying the remaining provisions of this Agreement. Where, however, the conflicting provisions of any such applicable

law may be waived, they are hereby waived by the Railroad to the full extent permitted by law, it being the intention of the parties hereto that this Agreement shall be deemed to be a conditional sale and enforced as such.

Except as otherwise provided in this Agreement, the Railroad, to the full extent permitted by law, hereby waives all statutory or other legal requirements for any notice of any kind, notice of intention to take possession of or to sell or lease the Equipment, or any unit thereof, and any other requirements as to the time, place and terms of the sale or lease thereof, any other requirements with respect to the enforcement of the Vendor's rights under this Agreement and any and all rights of redemption.

ARTICLE 19. Recording. The Railroad will cause this Agreement, any assignments hereof and any amendments or supplements hereto or thereto to be filed and recorded with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act; and the Railroad will from time to time do and perform any other act and will execute, acknowledge, deliver, file, register, deposit and record any and all further instruments required by law or reasonably requested by the Vendor for the purpose of proper protection, to the satisfaction of counsel for the Vendor, of its title to the Equipment and its rights under this Agreement or for the purpose of carrying out the intention of this Agreement; and the Railroad will promptly furnish to the Vendor certificates or other evidence of such filing, registering, depositing and recording satisfactory to the Vendor.

ARTICLE 20. Payment of Expenses. The Railroad will pay all reasonable costs and expenses (other than the fees and expenses of counsel for any Builder) incident to this Agreement and the first assignment of this Agreement, and any instrument supplemental or related hereto or thereto, including all fees and expenses of counsel for the first assignee of this Agreement, and all reasonable costs and expenses in connection with the transfer by any party of interests acquired in such first assignment. If the first assignee is not an agent, such assignee may appoint a bank or trust company located in either the Borough of Manhattan, City and State of New York, or Chicago, Illinois, having capital and surplus aggregating at least $40,000,000 to act as agent on its behalf to hold all the right, title and interests of the Builders under this Agreement assigned

to it, all upon and subject to the terms and conditions provided for in a written agreement to be entered into by the first assignee and such agent in form and substance satisfactory to the first assignee and such agent; and the Railroad hereby agrees to pay all reasonable costs and expenses of such Agent. Prior to appointing such an agent, the assignee shall consult with the Railroad and shall give reasonable consideration to the recommendations of the Railroad as to the bank or trust company to be appointed.

ARTICLE 21. Notice. Any notice hereunder to any of the parties designated below shall be deemed to be properly served if delivered or mailed to it at its chief place of business at the following specified addresses:

(a) to the Railroad, at 80 East Jackson Street, Chicago, Illinois 60604, attention of R. W. Harper, Vice President-Finance.

(b) to a Builder, at its address specified in Item 1 of Schedule A hereto, and

(c) to any assignee of the Vendor or of the Railroad, at such address as may have been furnished in writing to each of the other parties hereto by such assignee,

or at such other address as may have been furnished in writing by such party to the other parties to this Agreement.

ARTICLE 22. Article Heading; Effect and Modification of Agreement. All article headings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

This Agreement, including the Schedules hereto, exclusively states the rights of the Vendor and the Railroad with respect to the Equipment and supersedes all other agreements, oral or written, with respect to the Equipment. No variation or modification of this Agreement and no waiver of any of its provisions or conditions shall be valid unless in writing and signed by duly authorized officers of the Vendor and the Railroad.

ARTICLE 23. Law Governing. The Railroad warrants that its chief place of business and its chief executive offices are located in the State of Illinois. The terms

of this Agreement and all rights and obligations hereunder shall be governed by the laws of the State of Illinois; provided, however, that the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act and such additional rights arising out of the filing, recording or deposit hereof, if any, and of any assignment hereof as shall be conferred by the laws of the several jurisdictions in which this Agreement or any assignment hereof shall be filed, recorded or deposited.

ARTICLE 24. Execution. This Agreement may be executed in any number of counterparts, and such counterparts together shall constitute but one and the same contract. It shall not be necessary that any counterpart be signed by all the parties so long as any counterpart be signed by the Railroad and one or more Builders. If this Agreement is assigned by any Builder, the original counterpart of this Agreement shall be deemed to be the counterpart executed by such Builder and delivered to such assignee. Each Builder shall be bound hereunder, notwithstanding the failure of any other Builder to execute and deliver this Agreement, or perform its obligations hereunder. Although this Agreement is dated, for convenience, as of the date first set forth above, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

IN WITNESS WHEREOF, the parties hereto, each pursuant to due corporate authority, have caused this instrument to be executed in their respective corporate names by their officers, thereunto duly authorized, and their respective corporate seals to be hereunto affixed, duly attested, all as of the date first above written.

GENERAL MOTORS CORPORATION
(Electro-Motive Division),

by

_____
Vice President

[Corporate Seal]

Attest:

_____
Assistant Secretary

FMC CORPORATION,

by

_____
Vice President

[Corporate Seal]

Attest:

_____
Assistant Secretary

PULLMAN INCORPORATED
(Pullman-Standard division),

by

_____
Vice President

[Corporate Seal]

Attest:

_____
Assistant Secretary

GENERAL ELECTRIC COMPANY,

by

_____
Manager-Marketing,
Locomotive Products Department

[Corporate Seal]

Attest:

_____
Attesting Secretary

PACCAR INC,

by

_____
Vice President

[Corporate Seal]

Attest:

_____
Assistant Secretary

ACF INDUSTRIES, INCORPORATED,

by

Vice President

[Corporate Seal]

Attest:

Assistant Secretary

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY,

by

Vice President-Finance

[Corporate Seal]

Attest:

Assistant Secretary

STATE OF ILLINOIS,)
) ss.:
COUNTY OF COOK,)

On this day of 1975, before me personally appeared , to me personally known, who, being by me duly sworn, says that he is a Vice President of GENERAL MOTORS CORPORATION (Electro-Motive Division), that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

_____
Notary Public

[Notarial Seal]

My Commission Expires

STATE OF ILLINOIS,)
) ss.:
COUNTY OF COOK,)

On this day of 1975, before me personally appeared , to me personally known, who, being by me duly sworn, says that he is a Vice President of FMC CORPORATION, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

_____
Notary Public

[Notarial Seal]

My Commission Expires

STATE OF ILLINOIS,)
) ss.:
COUNTY OF COOK,)

On this day of 1975, before me personally appeared , to me personally known, who, being by me duly sworn, says that he is a Vice President of PULLMAN INCORPORATED (Pullman-Standard division), that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

_____
Notary Public

[Notarial Seal]

My Commission Expires

COMMONWEALTH OF PENNSYLVANIA,)
) ss.:
COUNTY OF ERIE,)

On this day of 1975, before me personally appeared , to me personally known, who, being by me duly sworn, says that he is Manager-Marketing, Locomotive Products Department, of GENERAL ELECTRIC COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

_____
Notary Public

[Notarial Seal]

My Commission Expires

STATE OF WASHINGTON,)
) ss.:
COUNTY OF KING,)

On this day of 1975, before me personally appeared , to me personally known, who, being by me duly sworn, says that he is a Vice President of PACCAR INC, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Notary Public

[Notarial Seal]

My Commission Expires

STATE OF NEW YORK,)
) ss.:
COUNTY OF NEW YORK,)

On this 3rd day of February 1975, before me personally appeared W. W. WILSON, to me personally known, who, being by me duly sworn, says that he is a Vice President of ACF INDUSTRIES, INCORPORATED, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Edwin F. Meyer
Notary Public

[Notarial Seal]

My Commission Expires

EDWIN F. MEYER
NOTARY PUBLIC, State of New York
No. 30-7917803
Qualified in Nassau County
Certificate filed in New York County
Commission Expires March 30, 1976

STATE OF ILLINOIS,)
) ss.:
COUNTY OF COOK,)

On this 31ST day of January 1975, before me personally appeared R. W. HARPER, to me personally known, who, being by me duly sworn, says that he is a Vice President of THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

E. M. Arreguin
Notary Public

[Notarial Seal]

My Commission Expires
FEBRUARY 1, 1977

SCHEDULE A

Item 1: (a) General Motors Corporation (Electro-Motive Division), a Delaware corporation, La Grange, Illinois 60525.

(b) FMC Corporation, a Delaware corporation, 4700 Northwest Front Avenue, Portland, Oregon 97210.

(c) Pullman Incorporated (Pullman Standard division), a Delaware corporation, 200 South Michigan Avenue, Chicago, Illinois 60604.

(d) General Electric Company, a New York corporation, 2901 East Lake Road, Erie, Pennsylvania 16501.

(e) PACCAR Inc, a Delaware corporation, 1400 North 4th Street, Renton, Washington 98055.

(f) ACF Industries, Incorporated, a New Jersey corporation, 750 Third Avenue, New York, New York 10017.

Item 2: (a) (General Motors Corporation (Electro-Motive Division)): The Builder warrants that the Equipment will be built in accordance with the Specifications and the standards and requirements set forth in Article 2 of the Conditional Sale Agreement to which this Schedule is attached (hereinafter called the Agreement) and warrants that the Equipment will be free from defects in material (except as to specialties incorporated therein which were specified by the Railroad and not manufactured by the Builder) and workmanship under normal use and service; the Builder's obligations under this paragraph being limited to making good at its plant any part or parts of any unit of the Equipment which, within two years after the delivery of such unit to the Railroad or before such unit has been in scheduled service 250,000 miles (whichever event shall first occur), shall be returned to the Builder with transportation charges

prepaid and which the Builder's examination shall disclose to its satisfaction to have been thus defective.

This warranty of the Builder shall not apply (i) to any locomotive components which shall have been repaired or altered unless repaired or altered by the Builder or its authorized service representatives, if, in its judgment, such repairs or alterations affect the stability of a unit of the Equipment or (ii) to any unit of the Equipment which has been subject to misuse, negligence or accident.

This warranty is expressly in lieu of all other warranties expressed or implied, including any implied warranty of merchantability or fitness for a particular purpose, and of all other obligations or liabilities on the part of the Builder, except for its obligations under Articles 2, 3, 4 and 14 of the Agreement. The Builder neither assumes nor authorizes any person to assume for it any other liability in connection with the construction and delivery of the Equipment, except as aforesaid.

The Builder further agrees with the Railroad that neither the inspection as provided in Article 3 of the Agreement, nor any examination, nor the acceptance of any units of the Equipment as provided in Article 3 of the Agreement shall be deemed a waiver or a modification by the Railroad of any of its rights hereunder.

The Builder further agrees to hold harmless the Railroad from claims, costs and liability to the Builder's employees arising out of and in the course of their employment and while on the Railroad's premises or equipment except when traveling as revenue passengers on the Railroad's trains, and except that the Builder shall not be liable for the Railroad's sole negligence.

The Builder reserves the right to make change

in the design of, or add any improvements to, units of the Equipment at any time without incurring any obligation to make similar changes or additions in respect of units of Equipment previously delivered to the Railroad.

(b) (FMC Corporation): The Builder warrants that the Equipment will be built in accordance with the Specifications and the standards and conditions set forth in Article 2 of the Conditional Sale Agreement to which this Schedule is attached (hereinafter called the Agreement), and, except in cases of articles and materials specified by the Railroad and not manufactured by the Builder, warrants the Equipment to be free from defects in material and workmanship under normal use and service, the liability of the Builder under this warranty being limited, as the Railroad may elect: (i) to repair of the defect at the Builder's plant at Portland, Oregon; or (ii) to replacement of the defective part; or (iii) to the cost of repair or replacement according to the AAR Code of Rules Governing Condition of and Repairs to Freight and Passenger Cars with Interchange of Traffic.

The foregoing warranty of the Builder shall begin at the time of delivery of a unit of Equipment to the Railroad and terminate one year after such delivery. <u>This warranty is expressly in lieu of all other warranties expressed or implied on the part of the Builder</u>, except for the patent indemnification included in Article 14 of of the Agreement and except as hereinafter provided in this Schedule A, and the Builder neither assumes nor authorizes any person to assume for it any other warranty liability in connection with the construction and delivery of the Equipment.

The Builder further agrees that the Railroad shall have the right to repair the Equipment furnished by the Builder of its manufacture and that repair parts for such equipment may be made by, or for, the Railroad or purchased

in the open market, as the Railroad may determine; and it is agreed the Equipment may be repaired by other railroads no matter where the repair parts are obtained. This agreement includes the right on the part of the Railroad to purchase repair parts for such Equipment in anticipation of breakage, instead of waiting until the breakage actually occurs before ordering the repair parts.

The Builder's patent indemnification set forth in Article 14 of the Agreement does not apply to designs, systems, processes and formulae utilized by the Builder in or about the construction of the Equipment, or any unit thereof, as the result of specification by the Railroad, other than for patents or other rights controlled by the Builder; and the Railroad shall indemnify and save harmless the Builder and/or manufacturer and the Vendor for the use of any designs, systems, processes and formulae utilized by the Builder in or about the construction of the Equipment, or any unit thereof, as the result of specification by the Railroad, as against any patent infringement claims or damages as specified in said Article 14, other than for patents or other rights controlled by the Builder.

The Builder will hold harmless the Railroad from claims, costs and liability to Builder's employees arising out of and in the course of their employment and while on the Railroad's premises or equipment except when traveling as revenue passengers on the Railroad's trains.

(c) (Pullman Incorporated (Pullman-Standard division)): The Builder warrants that the Equipment will be built in accordance with the Specifications and the standards and requirements set forth in Article 2 of the Conditional Sale Agreement to which this Schedule is attached (hereinafter called the Agreement) and warrants the Equipment will be free from defects in material (except as to specialties incorporated therein specified by the Railroad

and not manufactured by the Builder) and workmanship and design under normal use and service, the Builder's obligation under this Item 2 being limited to making good at its plant any part or parts of any unit of Equipment which shall, within one year after the delivery of such unit of Equipment to the Railroad, be returned to the Builder with transportation charges prepaid and which examination by the Builder shall disclose to its satisfaction to have been thus defective.

The foregoing warranty is expressly in lieu of all other warranties, expressed or implied, including any implied merchantability or fitness for a particular purpose, and of all other obligations or liabilities on the part of the Builder, except for its obligations under Articles 2, 3, 4 and 14 of the Agreement, and the Builder neither assumes nor authorizes any person to assume for it any other liability in connection with the construction of the Equipment and delivery of the Equipment, except as aforesaid. It is further understood and agreed that in no event shall the Builder be liable for indirect or consequential damages of any kind.

The Builder further agrees with the Railroad that neither the inspection provided in Article 3 of the Agreement, nor any examination, nor the acceptance of any units of the Equipment as provided in said Article 3 shall be deemed a waiver or a modification by the Railroad of any of its rights under this Item 2.

(d) (General Electric Company): The Builder warrants that the Equipment will be built in accordance with the Specifications and the standards and requirements referred to in Article 2 of the Conditional Sale Agreement to which this Schedule is attached (hereinafter called the Agreement) and warrants the equipment will be free from defects in material (except as to specialties incorporated therein that are not of the Builder's own specification or design) and workmanship under normal use

and service; the Builder's obligations under this paragraph being limited to making good at its plant any part or parts of any unit of the Equipment which, within one year after the delivery of such unit to the Railroad, shall be returned to the Builder with transportation charges prepaid and which the Builder's examination shall disclose to its satisfaction to have been thus defective.

This warranty of the Builder shall not apply (i) to any locomotive components which shall have been repaired or altered, unless repaired or altered by the Builder or its authorized service representatives, if, in its judgment, such repairs or alterations affect the stability of a unit of the Equipment or (ii) to any unit of the Equipment which has been subject to misuse, negligence or accident.

THIS WARRANTY IS EXPRESSLY IN LIEU OF ALL OTHER WARRANTIES EXPRESSED OR IMPLIED, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND OF ALL OTHER OBLIGATIONS OR LIABILITIES ON THE PART OF THE BUILDER, EXCEPT FOR ITS OBLIGATIONS UNDER THE AGREEMENT. THE BUILDER NEITHER ASSUMES NOR AUTHORIZES ANY PERSON TO ASSUME FOR IT ANY OTHER LIABILITY IN CONNECTION WITH THE CONSTRUCTION AND DELIVERY OF THE EQUIPMENT, EXCEPT AS AFORESAID.

In no event shall the Builder be liable for special or consequential damages. The Builder's liability on any claim of any kind including negligence, or for any loss or damage arising out of, connected with, or resulting from, the Agreement, or from the performance or breach thereof, or from the manufacture, sale, delivery, resale, repair or use of any unit of the Equipment covered by, or furnished under, the Agreement, shall in no case exceed the Purchase Price of such unit of the Equipment involved in the claim, and upon the expiration of the warranty period specified above all such liability shall terminate. The Builder shall have no liability

for any unit of the Equipment or part thereof which becomes defective by reason of improper storage or application, misuse, negligence, accident or improper operation, maintenance, repairs or alterations on the part of the Railroad or any third party other than the Builder. The foregoing warranty shall constitute the sole remedy of the Railroad and the sole liability of the Builder.

It is understood that the Builder has the right to make changes in the design of, or to add improvements to units of the Equipment at any time without incurring any obligations to install, at the Builder's expense, the same or other locomotives sold by Builder.

The Builder further agrees with the Railroad that neither the inspection as provided in the Agreement, nor any examination, nor the acceptance of any units of the Equipment as provided in the Agreement shall be deemed a waiver or a modification by the Railroad of any of its rights under this Item 2.

(e) (PACCAR Inc): The Builder warrants that the Equipment will be built in accordance with the requirements, specifications and standards set forth in Article 2 of the Conditional Sale Agreement to which this Schedule is attached (hereinafter called the Agreement) and, except in cases of articles and materials specified by the Railroad and not manufactured by the Builder, warrants the Equipment to be free from defects in material and workmanship under normal use and service, the liability of the Builder under this warranty being limited, as the Railroad may elect: (i) to repair of the defects at the Builder's plant; or (ii) to replacement of a defective part; or (iii) to the cost of repair or replacement according to the AAR Code of Rules Governinig Condition of and Repairs to Freight and Passenger Cars with Interchange of Traffic. The Builder shall be given reasonable opportunity to verify any claim of defects in workmanship or materials.

The foregoing warranty of the Builder shall begin at the time of delivery of a unit of the Equipment to the Railroad and terminate two years after such delivery. THE BUILDER MAKES NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. The Railroad's right under the foregoing warranty shall be its sole and exclusive remedy and the Builder will have no liability for lost profit or for indirect, incidental, consequential or commercial losses. This warranty is expressly in lieu of all other warranties express or implied on the part of the Builder, except for the patent indemnification included in Article 14 of this Agreement. The Builder neither assumes nor authorizes any person to assume for it any other warranty liability in connection with the construction and delivery of the Equipment.

The Builder further agrees with the Railroad that neither the inspection as provided in Article 3 of the Agreement nor any examination nor the acceptance of any units of the Equipment as provided in said Article 3 shall be deemed a waiver or a modification by the Railroad of any of its rights under this Item 2.

The Builder will hold harmless the Railroad from claims, costs and liability to the Builder's employees arising out of and in the course of their employment and while on the Railroad's premises or equipment except when traveling as revenue passengers on the Railroad's trains.

(f) (ACF Industries, Incorporated): The Builder warrants that the Equipment will be built in accordance with the requirements, specifications and standards set forth in Article 2 of the Conditional Sale Agreement to which this Schedule is attached (hereinafter called this Agreement) and warrants the Equipment will be free from defects in material (except as to specialties incorporated therein which were specified or supplied by the Railroad and not manufactured by the Builder) and

workmanship under normal use and service, the Builder's obligation under this Item 2 being limited to making good at its factory any part or parts of any unit of the Equipment which shall be returned to the Builder with transportation charges prepaid, within one year after the delivery of such unit to the Railroad, and which the Builder's examination shall disclose to its satisfaction to have been thus defective. The foregoing warranty of the Builder is expressly in lieu of all other warranties, express or implied, including any implied warranty of merchantability or fitness for a particular purpose, and of all other obligations or liabilities under Articles 2, 3, 4 and 14 of the Agreement, and the Builder neither assumes nor authorizes any person to assume for it any other liability in connection with the construction and delivery of the Equipment except as aforesaid.

The Builder further agrees that neither the inspection as provided in Article 3 of this Agreement nor any examination nor the acceptance of any units of the Equipment as provided in said Article 3 shall be deemed a waiver or a modification by the Owner-Trustee of any of its rights under this Item 2.

SCHEDULE B

Builder	Type	Quantity	Builder's Specifications	Builder's Plant	Railroad's Numbers (inclusive)	Unit Base Price	Total Base Price	Time and Place of Delivery
(a) General Motors Corporation (Electro-Motive Divison)	2300 h.p. GP-39-2 locomotive	29	8075	McCook, Illinois	3627-3655	$355,200	$10,300,800	Prior to April 30, 1975, at Builder's Plant
(b) FMC Corporation	60' 9" 100-ton box car with roller bearings AAR Mechanical Designation XM	400	Job 17620	Portland, Oregon	611000-611399	36,000	14,400,000	March-April, 1975, at Builder's Plant
(c) Pullman Incorporated (Pullman-Standard division)	60' 9" 100-ton box car with roller bearings; AAR Mechanical Designation XL	216	Lot Number 9783	Bessemer, Alabama	611400-611615	33,100	7,149,600	April-May, 1975, at Bessemer, Ala.

SCHEDULE B (Cont'd)

Builder	Type	Quantity	Builder's Specifications	Builder's Plant	Railroad's Numbers (inclusive)	Unit Base Price	Total Base Price	Time and Place of Delivery
(d) General Electric Company	U-36-C, 3600 h.p. locomotive; AAR Mechanical Designation C-C	6	3690E	Erie, Pennsylvania	8794-8799	$436,300	$ 2,617,800	Prior to March 1, 1975, at Erie, Pa.
(e) PACCAR Inc	52' 6", 70-ton insulated box car with roller bearing trucks, cushioned underframe, dual Air'Pak load dividers, 16' doors;	100	PC-339, as revised	Renton, Washington	522800-522899	37,100	3,710,000	Prior to March 1, 1975, at Builder's Plant
(f) ACF Industries, Incorporated	4600 cu. ft., 100-ton covered hopper car with roller bearing trucks and interior coating	400	11-01312, dated November 11, 1974	Huntington, West Virginia	314800-315199	30,000	12,000,000	February-March, 1975, at Russell, Ky.

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INTERSTATE COMMERCE COMMISSION

CONDITIONAL SALE AGREEMENT

Dated as of January 15, 1975

Among

GENERAL MOTORS CORPORATION
(Electro-Motive Division),
FMC CORPORATION,
PULLMAN INCORPORATED (Pullman Standard division)
GENERAL ELECTRIC COMPANY,
PACCAR INC,
ACF INDUSTRIES, INCORPORATED

and

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY

CONDITIONAL SALE AGREEMENT dated as of January 15, 1975, among each of the corporations named in Item 1 of Schedule A hereto and THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, a Delaware corporation (hereinafter called the Railroad).

WHEREAS each of the corporations named in Item 1 of Schedule A hereto severally have agreed to construct, sell and deliver to the Railroad, and the Railroad has agreed to purchase, the equipment described in Schedule B hereto (hereinafter called the Equipment);

NOW, THEREFORE, in consideration of the mutual promises, covenants and agreements hereinafter set forth, the parties hereto do hereby agree as follows:

ARTICLE 1. Certain Definitions; Obligations of Builders Several; Additional Agreements. The term "Vendor", whenever used in this Agreement, means, before any assignment of any of their rights hereunder, the respective corporations named in Item 1 of Schedule A hereto and any successor or successors for the time being to their respective manufacturing properties and businesses, and, after any such assignment, both any assignee or assignees for the time being of such particular assigned rights as regards such rights, and also any assignor as regards any rights hereunder that are retained or excluded from any assignment. Whenever the term "Vendor" refers to a corporation named in Item 1 of Schedule A hereto, such term shall mean any or all such corporations, as the context may require. The term "Builder", whenever used in this Agreement, means, both before and after any such assignment, each of the respective corporations (as to the units of Equipment to be constructed by such corporation and sold hereunder) named in Item 1 of Schedule A hereto and any successor or successors for the time being to their respective manufacturing properties and businesses.

The rights and obligations of the Builders under this Agreement are several in accordance with their interests and not joint. Accordingly, whenever this Agreement, by the use of such designation as "the Vendor", "such Builder" or other similar term, confers a right or imposes an obligation upon any corporation named in Item 1 of Schedule A hereto or its successor, such right or obligation shall be

construed to accrue to or to be enforceable against only the specific corporation furnishing the units of Equipment giving rise to such right or obligation and its successors as herein provided.

Additional Agreements, if any, set forth in Schedule A hereto shall be deemed to be a part of this Agreement as fully as though set forth in full in this instrument.

ARTICLE 2. Construction and Sale. Pursuant to this Agreement, each Builder shall construct the units of the Equipment to be constructed by it as described in Schedule B hereto (such Equipment with respect to each Builder being hereinafter sometimes called its Equipment) and will sell and deliver to the Railroad, and the Railroad will purchase from such Builder and accept delivery of and pay for (as hereinafter provided), such Equipment, each unit of which shall be constructed in accordance with the specifications set forth therefor in Schedule B hereto and in accordance with such modifications thereof as may be agreed upon in writing between such Builder and the Railroad (which specifications and modifications, if any, are hereinafter called the Specifications). The design, quality and component parts of each unit of the Equipment shall conform, on the date of completion of manufacture of each thereof, to all Department of Transportation and Interstate Commerce Commission requirements and specifications and to all standards recommended by the Association of American Railroads reasonably interpreted as being applicable to equipment of the character of such units of the Equipment and each unit of the Equipment (except to the extent, if any, referred to in Schedule A hereto and/or in Article 8 hereof) will be new railroad equipment.

ARTICLE 3. Inspection and Delivery. Each Builder will deliver the units of its Equipment to the Railroad at the place or places specified in Schedule B hereto (or if Schedule B does not specify a place or places, at the place or places designated from time to time by the Railroad), freight charges, if any, prepaid, in accordance with the delivery schedule set forth in Schedule B hereto; provided, however, that no Builder shall have any obligation to deliver any unit of its Equipment hereunder at any time after the commencement of any proceedings specified in clause (c) or (d) of Article 16 hereof or if any event of default (as described in Article 16 hereof), or event which with lapse of time and/or demand would constitute such an event of default, shall have occurred.

Each Builder's obligation as to time of delivery is subject, however, to delays resulting from causes beyond the Builder's reasonable control, including but not limited to acts of God, acts of government such as embargoes, priorities and allocations, war or war conditions, riot or civil commotion, sabotage, strikes, differences with workmen, accidents, fire, flood, explosion, damage to plant, equipment or facilities, delays in receiving necessary materials or delays of carriers or subcontractors.

Notwithstanding the preceding provisions of this Article 3, any Equipment not delivered, accepted and settled for pursuant to Article 4 hereof on or before August 31, 1975, shall be excluded herefrom. If any unit or units of Equipment shall be excluded from this Agreement pursuant to the immediately preceding sentence, the Builder or Builders of such unit or units and the Railroad shall execute an agreement supplemental hereto limiting this Agreement to the units of Equipment not so excluded herefrom. If a Builder's failure to deliver Equipment so excluded from this Agreement resulted from one or more of the causes set forth in the immediately preceding paragraph, the Railroad shall nevertheless be obligated to accept such Equipment and pay the full purchase price therefor, determined as provided in this Agreement, if and when such Equipment shall be completed and delivered by such Builder, such payment to be in cash on the delivery of such Equipment, either directly or, in case the Railroad shall arrange therefor, by means of a conditional sale agreement, equipment trust or such other appropriate method of financing as the Railroad shall determine and as shall be reasonably acceptable to such Builder.

During construction, the Equipment shall be subject to inspection and approval by the authorized inspectors of the Railroad and each Builder shall grant to such authorized inspectors reasonable access to its plant. Each Builder agrees to inspect all materials used in the construction of the Equipment in accordance with the standard quality control practices of such Builder. Upon completion of each unit or of a number of units of the Equipment, such unit or units shall be presented to an inspector of the Railroad for inspection at the place specified for delivery of such unit or units, and if each such unit conforms to the Specifications, requirements and standards applicable thereto, such inspector or an authorized representative of the Railroad shall execute and deliver to such Builder a certificate of acceptance (hereinafter called the Certificate of Accep-

tance) stating that such unit or units have been inspected and accepted on behalf of the Railroad and are marked in accordance with Article 7 hereof; provided, however, that such Builder shall not thereby be relieved of its warranty referred to in Article 14 hereof.

On delivery of each such unit hereunder at the place specified for delivery, the Railroad will assume the responsibility and risk of, and shall not be released from its obligations hereunder in the event of, any damage to or the destruction or loss of such unit; provided, however, that such delivery shall not thereby relieve a Builder of its warranty referred to in Article 14 hereof.

ARTICLE 4. Purchase Price and Payment. The base price or prices per unit of the Equipment are set forth in Schedule B hereto. Such base price or prices are subject to such increase or decrease as may be agreed to by the Builder thereof and the Railroad. The term "Purchase Price" as used herein shall mean the base price or prices as so increased or decreased. If the aggregate Purchase Price of Equipment for which settlement has been made under this Agreement is in an amount not less than $50,250,000, the Railroad may, at its option, exclude from this Agreement any unit or units of Equipment for which settlement has not been made and the appropriate Builder or Builders of such unit or units (and any assignee of such Builder or Builders) shall, upon request of the Railroad enter into an agreement supplemental hereto evidencing such exclusion. The Railroad agrees to purchase any such unit or units so excluded from this Agreement and to pay the Builder in cash on the date such unit or units would otherwise have been settled for under this Agreement either directly, or, if the Builder and the Railroad shall mutually agree, by means of a conditional sale, equipment trust or other appropriate method of financing.

For the purpose of making settlement, the Equipment shall be divided into such number of groups (not more than three) of units of the Equipment, delivered to and accepted by the Railroad (each such group being hereinafter called a Group), as the respective Builder, the Railroad and the Vendor may agree to.

The Railroad hereby acknowledges itself to be indebted to the Vendor in the amount of, and hereby promises to pay in cash to the Vendor at such place as the Vendor

may designate, the Purchase Price of the Equipment, as follows:

(a) on each Closing Date (as hereinafter defined) the amount, if any, by which (x) the aggregate Purchase Price of all units of the Equipment for which settlement has theretofore and is then being made, as stated in the invoice or invoices presented in respect of such Closing Date (said invoiced prices being hereinafter called the Invoiced Purchase Prices), exceeds (y) the sum of $50,000,000 and any amount or amounts previously paid or payable with respect to the Invoiced Purchase Prices pursuant to this subparagraph (a); and

(b) in 15 consecutive equal (to the nearest multiple of $1,000, except for appropriate adjustment of the final instalment in case the amount payable pursuant to this subparagraph (b) shall not, when divided by 15, result in an amount ending in a multiple of $1,000) annual instalments, as hereinafter provided, an amount equal to the aggregate of the Invoiced Purchase Prices for all the Equipment less the amount paid or payable with respect thereto pursuant to subparagraph (a) of this paragraph (the aggregate of said instalments being hereinafter called the Conditional Sale Indebtedness).

In the event that on any Closing Date the final Purchase Price of any Group has not been finally determined, the invoice presented may be a preliminary invoice, subject to upward adjustment upon determination of the final Purchase Price, and a supplemental invoice may be presented by the Builder at least ten days prior to any subsequent Closing Date for settlement on such subsequent Closing Date for any increase in the Purchase Price; it being understood and agreed by the Builders that any preliminary invoice or invoices presented by the Builders in respect of any Group shall be in amount not in excess of the final Purchase Price of such Group.

The instalments of the Conditional Sale Indebtedness payable pursuant to subparagraph (b) of the third paragraph of this Article 4 shall be payable annually on May 15 in each year commencing on May 15, 1976, to and including May 15, 1990. The unpaid portion of the Conditional Sale Indebtedness shall bear interest from the respective Closing Dates on which such indebtedness was incurred at the rate of 9-3/4% per annum. Such interest shall be payable, to the extent accrued, on May 15 and November 15 in each year, commencing May 15, 1975.

The term "Closing Date" with respect to any Group of the Equipment shall mean March 3, 1975, and such other dates (after March 3, 1975, and prior to August 31, 1975,) not more than 10 business days following presentation by a Builder to the Railroad of the invoice and the Certificate or Certificates of Acceptance for such Group, as shall be fixed by the Railroad by written notice delivered to the Vendor at least six business days prior to the Closing Date designated therein; it being understood and agreed, however, that the aggregate Purchase Price of all Equipment settled for on Closing Dates prior to April 1, 1975, shall not exceed $26,000,000. The term "business days" as used herein means calendar days, excluding Saturdays, Sundays and any other day on which banking institutions in Chicago, Illinois, or New York, New York, are authorized to remain closed.

All interest under this Agreement shall be calculated on the basis of a 360-day year of twelve 30-day months.

The Railroad will pay, to the extent legally enforceable, interest at the rate of 10-3/4% per annum upon all amounts remaining unpaid after the same shall have become due and payable pursuant to the terms hereof, anything herein to the contrary notwithstanding.

All payments provided for in this Agreement shall be made in such coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts. Except as provided in Article 8 hereof, the Railroad shall not have the privilege of prepaying any instalment of its indebtedness hereunder prior to the date it becomes due.

In the event the Vendor, pursuant to Article 15 hereof, assigns the right to receive the payments herein provided to be made by the Railroad, the assignee thereof may request the Railroad to make and the Railroad shall make such payments to it at such address as shall be supplied to the Railroad by the assignee.

ARTICLE 5. Taxes. All payments to be made by the Railroad hereunder will be free of expense to the Vendor for collection or other charges and will be free of expense to the Vendor with respect to the amount of any local, state, federal or foreign taxes (other than net income, gross receipts [except gross receipts taxes in the nature of or in lieu of sales or use taxes], excess profits and similar taxes) or license fees, assessments, charges, fines or penal-

ties hereafter levied or imposed upon or in connection with or measured by, this Agreement or any sale, use, payment, shipment, delivery or transfer of title under the terms hereof (all such expenses, taxes, license fees, assessments, charges, fines and penalties being hereinafter called impositions), all of which impositions the Railroad assumes and agrees to pay on demand. The Railroad will also pay promptly all impositions which may be imposed upon the Equipment delivered to it or for the use or operation thereof or upon the earnings arising therefrom or upon the Vendor solely by reason of its ownership thereof and will keep at all times all and every part of the Equipment free and clear of all impositions which might in any way affect the title of the Vendor or result in a lien upon any part of the Equipment; provided, however, that the Railroad shall be under no obligation to pay any impositions of any kind so long as it is contesting in good faith and by appropriate legal proceedings such impositions and the nonpayment thereof does not, in the opinion of the Vendor, adversely affect the property or rights of the Vendor in or to the Equipment or otherwise under this Agreement. If any such impositions shall have been charged or levied against the Vendor directly and paid by the Vendor, the Railroad shall reimburse the Vendor upon presentation of an invoice therefor, and any amounts so paid by the Vendor shall be secured by and under this Agreement; provided, however, that the Railroad shall not be obligated to reimburse the Vendor for any impositions so paid unless the Vendor shall have been legally liable with respect thereto (as evidenced by an opinion of counsel for the Vendor) or unless the Railroad shall have approved the payment thereof.

ARTICLE 6. Title to the Equipment. The Vendor shall and hereby does retain the full legal title to and property in the Equipment until the Railroad shall have made all its payments under this Agreement and shall have kept and performed all its agreements herein contained, notwithstanding the delivery of the Equipment to and the possession and use thereof by the Railroad as provided in this Agreement. Any and all additions to the Equipment and any and all replacements of the Equipment and of parts thereof and additions thereto shall constitute accessions to the Equipment and shall be subject to all the terms and conditions of this Agreement and included in the term "Equipment" as used in this Agreement.

Except as otherwise specifically provided in Article 8 hereof, when and only when the full indebtedness in

respect of the Purchase Price of the Equipment, together with interest and all other payments as herein provided, shall have been paid, and all the Railroad's obligations herein contained shall have been performed by the Railroad, absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Railroad without further transfer or action on the part of the Vendor. However, the Vendor, if so requested by the Railroad at that time, will (a) execute a bill or bills of sale for the Equipment transferring its title thereto and property therein to the Railroad, or upon its order, free of all liens, security interests and other encumbrances created or retained hereby and deliver such bill or bills of sale to the Railroad at its address referred to in Article 21 hereof, (b) execute and deliver at the same place, for filing, recording or depositing in all necessary public offices, such instrument or instruments in writing as may be necessary or appropriate in order then to make clear upon the public records the title of the Railroad to the to the Equipment and (c) pay to the Railroad any money paid to the Vendor pursuant to Article 8 hereof and not theretofore applied as therein provided. The Railroad hereby waives and releases any and all rights, existing or that may be acquired, in or to the payment of any penalty, forfeit or damages for failure to execute and deliver such bill or bills of sale or instrument or instruments or to file any certificate of payment in compliance with any law or statute requiring the filing of the same, except for failure to execute and deliver such bill or bills of sale or instrument or instruments or to file such certificate within a reasonable time after written demand by the Railroad.

ARTICLE 7. Marking of the Equipment. The Railroad will cause each unit of the Equipment to be kept numbered with its identifying number as set forth in Schedule B hereto, or in the case of Equipment not there listed such identifying number as shall be set forth in any amendment or supplement hereto extending this Agreement to cover such Equipment, and will keep and maintain, plainly, distinctly, permanently and conspicuously marked on each side of each unit, in letters not less than one inch in height, the words "Ownership subject to a Security Interest Filed under the Interstate Commerce Act, Section 20c" or other appropriate markings approved by the Vendor, with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the Vendor's title to and property in the Equipment and its rights under this Agreement. The

Railroad will not place any such unit in operation or exercise any control or dominion over the same until such markings have been made thereon and will replace promptly any such markings which may be removed, defaced or destroyed. The Railroad will not change the number of any unit of the Equipment except in accordance with a statement of new number or numbers to be substituted therefor, which statement previously shall have been filed with the Vendor by the Railroad and filed, recorded and deposited by the Railroad in all public offices where this Agreement shall have been filed, recorded and deposited.

Except as provided in the immediately preceding paragraph, the Railroad will not allow the name of any person, association or corporation to be placed on any unit of the Equipment as a designation that might be interpreted as a claim of ownership; provided, however, that the Railroad may cause the Equipment to be lettered with the names or initials or other insignia of the Railroad or its affiliates.

ARTICLE 8. Casualty Occurrences. In the event that any unit of the Equipment shall be worn out, lost, stolen, destroyed, irreparably damaged or otherwise rendered permanently unfit for use from any cause whatsoever, or taken or requisitioned by condemnation or otherwise (such occurrences being hereinafter called Casualty Occurrences), the Railroad shall promptly (after it has knowledge of such Casualty Occurrence) and fully inform the Vendor in regard thereto. When the aggregate Casualty Value (as defined herein) of all units having suffered a Casualty Occurrence (exclusive of units having suffered a Casualty Occurrence with respect to which a payment shall have been made to the Vendor pursuant to this Article 8) hereunder shall exceed $250,000 (or such lesser amount as the Railroad may elect), the Railroad, within 90 days after the Railroad has knowledge of such event, shall file with the Vendor a certificate of an officer of the Railroad setting forth the Casualty Value of each unit of the Equipment having suffered a Casualty Occurrence and shall pay to the Vendor a sum equal to the aggregate Casualty Value as of the date of such payment of such unit or units of the Equipment having suffered a Casualty Occurrence, together with interest on such sum so being prepaid accrued to the date of such prepayment, but without premium, (the Railroad hereby agreeing to make such payment of accrued interest to the Vendor at the time it makes payment of such Casualty Value to the Vendor); provided, however, if and so long as no event of default

shall have occurred and be continuing hereunder, in lieu of making all or any portion of such payment to the Vendor, the Railroad may, on or before the expiration of such 90-day period, cause to be transferred to the Vendor a replacement unit or units of standard gauge railroad equipment (other than passenger or work equipment of types other than locomotives) and receive credit against the Casualty Value payment it would otherwise have been required to make in an amount equal to the value threof. The value of any unit or units of replacement equipment shall be equal to the cost thereof, if new, as specified in the invoice therefor delivered to the Vendor or, if not new, the lesser of (y) the fair market value thereof or (z) the original cost thereof less depreciation at a rate equal to 1/15th of such cost for each year in service, all as set forth in a certificate of an officer of the Railroad delivered to the Vendor at the time of such replacement. Any unit of replacement equipment shall have a remaining useful life (as evidenced by a certificate of an operating officer at the Railroad) at least as long as that which the Equipment being replaced would have had but for the Casualty Occurrence. In case any money is applied to prepay indebtedness, it shall be so applied, together with the interest due thereon, on the business day next following receipt by the Vendor of the appropriate payment, to reduce instalments of the aggregate Conditional Sale Indebtedness thereafter falling due in the inverse order of maturity thereof without premium.

The Casualty Value of each unit of the Equipment (other than a replacement unit) shall be deemed to be that amount which bears the same ratio to the original Purchase Price thereof (less, in the event that the Railroad shall have made any payment or payments under the provisions of subparagraph (a) of the third paragraph of Article 4 hereof, an amount which bears the same ratio to the aggregate of all such payments as the original Purchase Price of such unit bears to the original aggregate Purchase Price of all the Equipment) as the unpaid Conditional Sale Indebtedness (without giving effect to any prepayments then or theretofore made pursuant to this Article 8) as of the date payment is made with respect to such Casualty Occurrence bears to the original Conditional Sale Indebtedness. The Casualty Value of each replacement unit shall be deemed to be that amount which bears the same ratio to the portion of the cost thereof paid by the Vendor as the unpaid Conditional Sale Indebtedness ness (without giving effect to any prepayments then or theretofore made pursuant to this Article 8) as of the date payment

is made with respect to such Casualty Occurrence bears to the unpaid Conditional Sale Indebtedness (without giving effect to any such prepayments) as of the date of acquisition by the Vendor of such replacement unit.

The Railroad will cause any replacement unit or units to be marked as provided in Article 7 hereof. Any and all such replacements of Equipment shall constitute accessions to the Equipment and shall be subject to all appropriate terms and conditions of this Agreement as though part of the original Equipment delivered hereunder and shall be included in the term "Equipment" as used in this Agreement. Title to all such replacement units shall be free and clear of all liens and encumbrances except the liens permitted by the second paragraph of Article 12 hereof and shall be taken initially and shall remain in the name of the Vendor subject to the provisions hereof, and the Railroad shall execute, acknowledge, deliver, file, record or deposit all such documents and do any and all such acts as may be necessary to cause such replacement units to come under and be subject to this Agreement. All such replacement units shall be guaranteed and warranted in like manner as is customary at the time for similar equipment. Whenever the Railroad shall cause to be transferred to the Vendor a unit or units of replacement Equipment, the Railroad shall deliver to the Vendor an executed counterpart of an opinion of counsel covering the matters set forth in this paragraph.

In order to facilitate the sale or other disposition of any Equipment suffering a Casualty Occurrence, in respect of which the Railroad shall have paid to the Vendor the Casualty Value and/or shall have caused to be transferred to the Vendor a unit or units of replacement Equipment, the Vendor shall, upon request of the Railroad, execute and deliver to the Railroad or the Railroad's vendee, assignee or nominee, a bill of sale (without warranties) for such Equipment, and such other documents as may be required to release such Equipment from the terms and scope of this Agreement, in such form as may be reasonably requested by the Railroad.

The Railroad will at all times prior to the payment in full of the Conditional Sale Indebtedness together with interest thereon and all other payments required hereby, at its own expense, cause to be carried and maintained insurance in respect of the Equipment consisting of locomotives at the time subject hereto, and public liability insurance,

in amounts and against risks customarily insured against by railroad companies on similar equipment, and in any event in amounts and against risks comparable to those insured against by the Railroad on equipment owned by it; provided, however, that the Railroad may act as self-insurer in respect of losses and damage not exceeding $3,000,000 in respect of any single occurrence.

ARTICLE 9. Maintenance; Compliance with Laws and Rules. The Railroad will at all times maintain the Equipment or cause the Equipment to be maintained in good order and repair at its own expense.

During the term of this Agreement, the Railroad will at all times comply in all respects with all laws of the jurisdictions in which its operations involving the Equipment may extend, with the interchange rules of the Asociation of American Railroads and with all lawful rules of the Department of Transportation, Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Equipment, to the extent that such laws and rules affect the title, operation or use of the Equipment, and in the event that such laws or rules require any alteration, replacement or addition of any part on any unit of the Equipment, the Railroad will conform therewith, at its own expense; provided, however, that the Railroad may, in good faith, contest the validity or application of any such law or rule in any reasonable manner which does not, in the opinion of the Vendor, adversely affect the property or rights of the Vendor under this Agreement.

ARTICLE 10. Reports and Inspections. On or before March 31 in each year, commencing with the calendar year 1976, the Railroad shall furnish to the Vendor an accurate statement signed by an officer of the Railroad (a) setting forth as at the preceding December 31 the amount, description and numbers of all units of the Equipment that have suffered a Casualty Occurrence during the preceding calendar year (or since the date of this Agreement in the case of the first such statement) or that have been withdrawn from use pending repairs (other than running repairs) and such other information regarding the condition and state of repair of the Equipment as the Vendor may reasonably request and (b) stating that, in the case of all Equipment repaired or repainted during the period covered by such statement, the numbers and markings required by Article 7 hereof have

been preserved or replaced. During the term of this Agreement, the Vendor shall have the right, by its agents, to inspect the Equipment and the Railroad's records with respect thereto at such times and locations as the Vendor may reasonably request.

The Railroad shall furnish (i) as soon as available and in any event within 60 days after the end of each quarterly period, except the last, of each fiscal year, a balance sheet of the Railroad (as filed with the Interstate Commerce Commission (hereinafter called the ICC)) as at the end of such period, and an income statement of the Railroad as filed with the ICC for the period beginning on the first day of such fiscal year and ending on the date of such balance sheet, setting forth comparative figures for the corresponding period of the preceding fiscal year, all in reasonable detail and certified by the principal accounting officer of the Railroad, and (ii) as soon as available and in any event within 120 days after the end of each fiscal year, a copy of the Railroad's annual report as filed with the ICC, which shall include the balance sheet, income statement and statement of retained income of the Railroad certified by the principal accounting officer of the Railroad and which shall be accompanied by a letter from the independent accountants for Santa Fe Industries, Inc., the parent of the Railroad, stating that such financial statements, restated to generally accepted accounting principles, were included in the certified consolidated financial statement of Santa Fe Industries, Inc., and that such certified financial statements are not qualified with respect to the Railroad and, in the event a restatement to generally accepted accounting principles is required, such letter shall be accompanied by a schedule which shall describe such restatement in reasonable detail.

ARTICLE 11. Possession and Use. The Railroad, so long as an event of default shall not have occurred under this Agreement and be continuing, shall be entitled to the possession of the Equipment and the use thereof upon the lines of railroad owned or operated by it either alone or jointly with others and whether under lease or otherwise, or upon the lines of railroad owned or operated by any railroad company controlled by, or under common control with, the Railroad, or over which it has trackage rights, or upon connecting and other carriers in the usual interchange of traffic, from and after delivery of the Equipment by the Builder to the Railroad, but only upon and subject to all the terms and conditions of this Agreement.

ARTICLE 12. Prohibition Against Liens. The Railroad will pay or discharge any and all sums claimed by any party from, through or under the Railroad or its successors or assigns which, if unpaid, might become a lien, charge or security interest on the Equipment, or any unit thereof, equal or superior to the Vendor's title thereto or property therein; provided, however, that the Railroad shall be under no obligation to pay or discharge any such claim so long as it is contesting in good faith and by appropriate legal proceedings such claim and the nonpayment thereof does not, in the opinion of the Vendor, adversely affect the property or rights of the Vendor in or to the Equipment or otherwise under this Agreement. Any amounts paid by the Vendor in discharge of liens, charges or security interests upon the Equipment shall be secured by and under this Agreement.

This covenant will not be deemed breached by reason of liens for taxes, assessments or governmental charges or levies, in each case not due and delinquent, or undetermined or inchoate materialmen's, mechanics', workmen's, repairmen's or other like liens arising in the ordinary course of business and, in each case, not delinquent.

ARTICLE 13. Railroad's Indemnities. The Railroad agrees to indemnify, protect and hold harmless the Vendor from and against all losses, damages, injuries, liabilities, claims and demands whatsoever, regardless of the cause thereof, and expenses in connection therewith, including counsel fees, arising out of retention by the Vendor of title to the Equipment, the use and operation thereof by the Railroad during the period when title thereto remains in the Vendor or the transfer of title to the Equipment by the Vendor pursuant to any of the provisions of this Agreement, except, however, any losses, damages, injuries, liabilities, claims and demands whatsoever arising out of any tort, breach of warranty or failure to perform any covenant hereunder by any Builder. This covenant of indemnity shall continue in full force and effect notwithstanding the full payment of all sums due under this Agreement, or the satisfaction, discharge or termination of this Agreement in any manner whatsoever.

ARTICLE 14. Patent Indemnities; Builder's Warranty of Material and Workmanship. Except in cases of articles or materials specified by the Railroad and not manufactured by a Builder and in cases of designs, systems, processes, formulae or combinations specified by the Railroad and not

developed or purported to be developed by any Builder, each Builder agrees to indemnify, protect and hold harmless the Railroad from and against any and all liability, claims, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Railroad, its assigns or the users of its respective Equipment because of the use in or about the construction or operation of any of the Equipment of any design, system, process, formula, combination, article or material which infringes or is claimed to infringe on any patent or other right. The Railroad likewise will indemnify, protect and hold harmless the Vendor from and against any and all liability, claims, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Vendor because of the use in or about the construction or operation of any of the Equipment of any article or material specified by the Railroad and not manufactured by a Builder or of any design, system, process, formula or combination specified by the Railroad and not developed or purported to be developed by a Builder which infringes or is claimed to infringe on any patent or other right. Each Builder agrees to and hereby does, to the extent legally possible without impairing any claim, right or cause of action hereinafter referred to, assign, set over and deliver to the Railroad every claim, right and cause of action which such Builder has or hereafter shall have against the seller or sellers of any designs, systems, processes, formulae, combinations, articles or materials specified by the Railroad and purchased or otherwise acquired by such Builder for use in or about the construction or operation of any of the Equipment on the ground that any such design, system, process, formula, combination, article or material or operation thereof infringes or is claimed to infringe on any patent or other right. Each Builder further agrees to execute and deliver to the Railroad or the users of the Equipment all and every such further assurance as may be reasonably requested by the Railroad more fully to effectuate the assignment and delivery of every such claim, right and cause of action. Each Builder will give notice to the Railroad of any claim known to such Builder from which liability may be charged against the Railroad hereunder and the Railroad will give notice to the appropriate Builder of any claim known to the Railroad from which liability may be charged against any Builder hereunder. Such covenants of indemnity shall continue in full force and effect notwithstanding the full payment of all sums due under this Agreement, or the satisfaction,

discharge or termination of this Agreement in any manner whatsoever.

Each Builder's warranty of material and workmanship is set forth in Schedule A hereto.

ARTICLE 15. Assignments. The Railroad will not sell, assign, transfer or otherwise dispose of its rights under this Agreement or, except as provided in Article 11 hereof, transfer the right to possession of any unit of the Equipment without first obtaining the written consent of the Vendor. A sale, assignment, transfer or disposition to a railroad company organized under the laws of the United States of America or any of the states thereof which shall acquire all or substantially all the lines of railroad of the Railroad, and which, by execution of an appropriate instrument satisfactory to the Vendor, shall assume and agree to perform each of, and all, the obligations and covenants of the Railroad under this Agreement, shall not be deemed a breach of this covenant.

All or any of the rights, benefits and advantages of the Vendor under this Agreement, including the right to receive the payments herein provided to be made by the Railroad, may be assigned by the Vendor and reassigned by any assignee at any time or from time to time. No such assignment shall subject any assignee to, or relieve any Builder from, any of the obligations of such Builder to construct and deliver the Equipment in accordance with this Agreement or to respond to its respective warranties and indemnities contained or referred to in Article 14 hereof, or relieve the Railroad of any of its obligations to such Builders under Articles 2, 3, 4, 5, 13 and 14 hereof, Schedule A hereto and this Article 15 or of any other obligation which, according to its terms or context, is intended to survive an assignment.

Upon any such assignment either the assignor or the assignee shall give written notice to the Railroad, together with a counterpart or copy of such assignment, stating the identity and post office address of the assignee, and such assignee shall by virtue of such assignment acquire all the assignor's right, title and interest in and to the Equipment and this Agreement, or in and to a portion thereof, as the case may be, subject only to such reservations as may be contained in such assignment. From and after the receipt by the Railroadd of the notification of any such

assignment, all payments thereafter to be made by the Railroad under this Agreement shall, to the extent so assigned, be made to the assignee in such manner as it may direct.

The Railroad recognizes that it is the custom of railroad equipment manufacturers to assign conditional sale agreements and understands that the assignment of this Agreement, or of some of or all the rights of the Vendor hereunder, is contemplated. The Railroad expressly represents, for the purpose of assurance to any person, firm or corporation considering the acquisition of this Agreement or of all or any of the rights of the Vendor hereunder and for the purposes of inducing such acquisition, that in the event of such assignment by the Vendor as hereinbefore provided, the rights of such assignee to the entire unpaid indebtedness in respect of the Purchase Price or such part thereof as may be assigned, together with interest thereon, as well as any other rights hereunder which may be so assigned, shall not be subject to any defense, setoff, counterclaim or recoupment whatsoever arising out of any breach of any obligation of a Builder with respect to the Equipment or the manufacture, construction, delivery or warranty thereof, or with respect to any indemnity herein contained, nor subject to any defense, setoff, counterclaim or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to the Railroad by a Builder. Any and all such obligations, howsoever arising, shall be and remain enforceable by the Railroad against and only against the respective Builders.

The Railroad will (a) in connection with each settlement for the Equipment subsequent to such assignment, deliver to the assignee, at least five business days prior to the Closing Date for the Group fixed in the notice by the Railroad, all documents required by the terms of such assignment to be delivered to such assignee in connection with such settlement, in such number of counterparts or copies as may reasonably be requested, except for any opinion of counsel for such assignee, and (b) furnish to such assignee such number of counterparts of any other certificate or paper required by the Vendor as may reasonably be requested.

If this Agreement shall have been assigned by the Builders and the assignee shall not make payment to a Builder with respect to units of its Equipment as provided in the instrument making such assignment, such Builder will promptly notify the Railroad of such event and, if such

amount shall not have been previously paid by such assignee, the Railroad will, not later than 90 days after the date such payment was due, pay or cause to be paid to such Builder the aggregate unpaid Purchase Price of such units of its Equipment, together with interest from the day such payment was due to the date of payment by the Railroad at the highest prime rate of interest charged by any of the four New York City banks having the largest total assets, in effect on the date such payment was due.

ARTICLE 16. Defaults. In the event that any one or more of the following events of default shall occur and be continuing, to wit:

(a) the Railroad shall fail to pay in full any indebtedness in respect of the Purchase Price of the Equipment or any other sum payable by the Railroad as provided in this Agreement within ten days after payment thereof shall be due hereunder; or

(b) the Railroad shall, for more than 30 days after the Vendor shall have demanded in writing performance thereof, fail or refuse to comply with any covenant, agreement, term or provision of this Agreement, or of any agreement entered into concurrently herewith relating to the financing of the Equipment on its part to be kept or performed or to make provision satisfactory to the Vendor for such compliance; or

(c) a petition for reorganization under Section 77 of the Bankruptcy Act, as now constituted or as said Section 77 may be hereafter amended, shall be filed by or against the Railroad and, unless such petition shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Railroad under this Agreement shall not have been (and shall not continue to have been) duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees appointed (whether or not subject to ratification) in such proceedings in such manner that such obligations shall have the same status as obligations incurred by such trustee or trustees, within 30 days after such appointment, if any, or 60 days after such petition shall have been filed, whichever shall be earlier; or

(d) any other proceedings shall be commenced by or against the Railroad for any relief under any bankruptcy or insolvency law, or law relating to the relief of debtors, readjustments of indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which does not permit any readjustment of the indebtedness payable hereunder), and, unless such proceedings shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Railroad under this Agreement shall not have been (and shall not continue to have been) duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed (whether or not subject to ratification) for the Railroad or for its property in connection with any such proceedings in such manner that such obligations shall have the same status as obligations incurred by such trustee or trustees or receiver or receivers, within 30 days after such appointment, if any, or 60 days after such proceedings shall have been commenced, whichever shall be earlier; or

(e) the Railroad shall make or suffer any unauthorized assignment or transfer of this Agreement or any interest herein or any unauthorized transfer of the right to possession of any unit of the Equipment;

then at any time after the occurrence of such an event of default the Vendor may, upon written notice to the Railroad and upon compliance with any mandatory legal requirements then in force and applicable to such action by the Vendor, declare (hereinafter called a Declaration of Default) the entire indebtedness in respect of the Purchase Price of the Equipment, together with the interest thereon then accrued and unpaid, immediately due and payable, without further demand, and thereafter the aggregate of the unpaid balance of such indebtedness and interest shall bear interest from the date of such Declaration of Default at the rate per annum specified in Article 4 hereof as being applicable to amounts remaining unpaid after becoming due and payable, to the extent legally enforceable. The Vendor shall thereupon be entitled to recover judgment for the entire unpaid balance of the indebtedness in respect of the Purchase Price of the Equipment so payable, with interest as aforesaid, and to collect such judgment out of any property of

the Railroad wherever situated. The Railroad shall promptly notify the Vendor of any event which has come to its attention which constitutes, or which with the giving of notice and/or lapse of time could constitute, an event of default under this Agreement.

The Vendor may at its election waive any such event of default and its consequences and rescind and annul any Declaration of Default by notice to the Railroad in writing to that effect, and thereupon the respective rights of the parties shall be as they would have been if no such event of default had occurred and no Declaration of Default had been made. Notwithstanding the provisions of this paragraph, it is expressly understood and agreed by the Railroad that time is of the essence of this Agreement and that no such waiver, rescission or annulment shall extend to or affect any other or subsequent default or impair any rights or remedies consequent thereon.

ARTICLE 17. Remedies. At any time during the continuance of a Declaration of Default, the Vendor may, subject to compliance with any mandatory legal requirements then in force and applicable to the action to be taken by the Vendor, take or cause to be taken by its agent or agents immediate possession of the Equipment, or one or more of the units thereof, without liability to return to the Railroad any sums theretofore paid and free from all claims whatsoever, except as hereinafter in this Article 17 expressly provided, and may remove the same from possession and use of the Railroad or any other person and for such purpose may enter upon the Railroad's premises or any other premises where the Equipment may be located and may use and employ in connection with such removal any supplies, services and aids and any available trackage and other facilities or means of the Railroad.

In case the Vendor shall demand possession of the Equipment pursuant to this Agreement and shall reasonably designate a point or points upon the premises of the Railroad for the delivery of the Equipment to the Vendor, the Railroad shall, at its own expense, forthwith and in the usual manner (including, but not by way of limitation, giving prompt telegraphic and written notice to the Association of American Railroads and all railroads to which any part of the Equipment has been interchanged to return the Equipment so interchanged), cause (a) the Equipment to be moved to such point or points on its lines as shall

be designated by the Vendor and shall there deliver the Equipment or cause it to be delivered to the Vendor and (b) the Equipment to be moved to such interchange point or points of the Railroad as shall be designated by the Vendor upon any sale, lease or other disposal of all or any part of the Equipment by the Vendor. At the option of the Vendor, the Vendor may keep the Equipment on any of the lines or premises of the Railroad until the Vendor shall have leased, sold or otherwise disposed of the same, and for such purpose the Railroad agrees to furnish, without charge for rent or storage, the necessary facilities at any point or points selected by the Vendor reasonably convenient to the Railroad and, at the Railroad's risk, to permit inspection of the Equipment by the Vendor, the Vendor's representatives and prospective purchasers and users. This agreement to deliver the Equipment and furnish facilities as hereinbefore provided is of the essence of the agreement between the parties, and, upon application to any court of equity having jurisdiction in the premises, the Vendor shall be entitled to a decree against the Railroad requiring specific performance hereof. The Railroad hereby expressly waives any and all claims against the Vendor and its agent or agents for damages of whatever nature in connection with any retaking of any unit of the Equipment in any reasonable manner.

At any time during the continuance of a Declaration of Default, the Vendor (after retaking possession of the Equipment as hereinbefore in this Article 17 provided) may at its election and upon such notice as is hereinafter set forth retain the Equipment in satisfaction of the entire indebtedness in respect of the Purchase Price of the Equipment and make such disposition thereof as the Vendor shall deem fit. Written notice of the Vendor's election to retain the Equipment shall be given to the Railroad by telegram or registered mail, addressed as provided in Article 21 hereof, and to any other persons to whom the law may require notice, within 30 days after such Declaration of Default. In the event that the Vendor should elect to retain the Equipment and no objection is made thereto within the 30-day period described in the second proviso below, all the Railroad's rights in the Equipment shall thereupon terminate and all payments made by the Railroad may be retained by the Vendor as compensation for the use of the Equipment by the Railroad; <u>provided, however</u>, that if the Railroad, before the expiration of the 30-day period described in the proviso below,

should pay or cause to be paid to the Vendor the total unpaid balance of the indebtedness in respect of the Purchase Price of the Equipment, together with interest thereon accrued and unpaid and all other payments due under this Agreement as well as expenses of the Vendor in retaking possession of, removing and storing the Equipment and the Vendor's reasonable attorneys' fees, then in such event absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Railroad; provided, further, that if the Railroad or any other persons notified under the terms of this paragraph object in writing to the Vendor within 30 days from the receipt of notice of the Vendor's election to retain the Equipment, then the Vendor may not so retain the Equipment, but shall sell, lease or otherwise dispose of it or continue to hold it pending sale, lease or other disposition as hereinafter provided or as may otherwise be permitted by law. If the Vendor shall have given no notice to retain as hereinabove provided or notice of intention to dispose of the Equipment in any other manner, it shall be deemed to have elected to sell the Equipment in accordance with the provisions of this Article 17.

At any time during the continuance of a Declaration of Default, the Vendor, with or without retaking possession thereof, at its election and upon reasonable notice to the Railroad and to any other persons to whom the law may require notice of the time and place, may sell the Equipment, or any unit thereof, free from any and all claims of the Railroad or any other party claiming from, through or under the Railroad, at law or in equity, at public or private sale and with or without advertisement as the Vendor may determine; provided, however, that if, prior to such sale and prior to the making of a contract for such sale, the Railroad should tender full payment of the total unpaid balance of the indebtedness in respect of the Purchase Price of the Equipment, together with interest thereon accrued and unpaid and all other payments due under this Agreement as well as expenses of the Vendor in retaking possession of, removing, storing, holding and preparing the Equipment for, and otherwise arranging for, the sale and the Vendor's reasonable attorneys' fees, then in such event absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Railroad. The proceeds of such sale, less the attorneys' fees and any other expenses incurred by the Vendor in retaking possession of, removing, storing,

holding, preparing for sale and selling the Equipment, shall be credited on the amount due to the Vendor under the provisions of this Agreement.

Any sale hereunder may be held or conducted at such place or places and at such time or times as the Vendor may specify, in one lot and as an entirety or in separate lots and without the necessity of gathering at the place of sale the property to be sold, and in general in such manner as the Vendor may determine. The Vendor or the Railroad may bid for and become the purchaser of the Equipment, or any unit thereof, so offered for sale. The Railroad shall be given written notice of such sale not less than ten days prior thereto, by telegram or registered mail addressed to the Railroad as provided in Article 21 hereof. If such sale shall be a private sale (which shall be deemed to mean only a sale where an advertisement for bids has not been published in a newspaper of general circulation or a sale where less than 40 railroads have been solicited in writing to submit bids), it shall be subject to the right of the Railroad to purchase or provide a purchaser, within ten days after notice of the proposed sale price, at the same price offered by the intending purchaser or a better price. In the event that the Vendor shall be the purchaser of the Equipment, it shall not be accountable to the Railroad (except to the extent of surplus money received as hereinafter provided in this Article 17), and in payment of the purchase price therefor the Vendor shall be entitled to have credited on account thereof all or any part of the sums due to the Vendor from the Railroad hereunder. From and after the date of any such sale, the Railroad shall pay to the Vendor the per diem interchange for each unit of Equipment which shall not have been assembled, as hereinabove provided, by the date of such sale for each day from the date of such sale to the date of delivery to the Purchaser at such sale.

Each and every power and remedy hereby specifically given to the Vendor shall be in addition to every other power and remedy hereby specifically given or now or hereafter existing at law or in equity, and each and every power and remedy may be exercised from time to time and simultaneously and as often and in such order as may be deemed expedient by the Vendor. All such powers and remedies shall be cumulative, and the exercise of one shall not be deemed a waiver of the right to exercise any other or others. No delay or omission of the Vendor in the exercise of any such power or

remedy and no renewal or extension of any payments due hereunder shall impair any such power or remedy or shall be contrued to be a waiver of any default or an acquiescence therein. Any extension of time for payment hereunder or other indulgence duly granted to the Railroad shall not otherwise alter or affect the Vendor's rights or the Railroad's obligations hereunder. The Vendor's acceptance of any payment after it shall have become due hereunder shall not be deemed to alter or affect the Railroad's obligations or the Vendor's rights hereunder with respect to any subsequent payments or default therein.

If, after applying all sums of money realized by the Vendor under the remedies herein provided, there shall remain any amount due to it under the provisions of this Agreement, the Railroad shall pay the amount of such deficiency to the Vendor upon demand, together with interest from the date of such demand to the date of payment by the Railroad at the rate per annum set forth in Article 4 hereof applicable to amounts remaining unpaid after becoming due and payable. If the Railroad shall fail to pay such deficiency, the Vendor may bring suit therefor and shall be entitled to recover a judgment therefor against the Railroad. If, after applying as aforesaid all sums realized by the Vendor, there shall remain a surplus in the possession of the Vendor, such surplus shall be paid to the Railroad.

The Railroad will pay all reasonable expenses, including attorneys' fees, incurred by the Vendor in enforcing its remedies under the terms of this Agreement. In the event that the Vendor shall bring any suit to enforce any of its rights hereunder and shall be entitled to judgment, then in such suit the Vendor may recover reasonable expenses, including attorneys' fees, and the amount thereof shall be included in such judgment.

The foregoing provisions of this Article 17 are subject in all respects to all mandatory legal requirements at the time in force and applicable thereto.

Article 18. Applicable State Laws. Any provision of this Agreement prohibited by any applicable law of any jurisdiction (which is not overridden by applicable federal law) shall as to such jurisdiction be ineffective, without modifying the remaining provisions of this Agreement. Where, however, the conflicting provisions of any such applicable

law may be waived, they are hereby waived by the Railroad to the full extent permitted by law, it being the intention of the parties hereto that this Agreement shall be deemed to be a conditional sale and enforced as such.

Except as otherwise provided in this Agreement, the Railroad, to the full extent permitted by law, hereby waives all statutory or other legal requirements for any notice of any kind, notice of intention to take possession of or to sell or lease the Equipment, or any unit thereof, and any other requirements as to the time, place and terms of the sale or lease thereof, any other requirements with respect to the enforcement of the Vendor's rights under this Agreement and any and all rights of redemption.

ARTICLE 19. Recording. The Railroad will cause this Agreement, any assignments hereof and any amendments or supplements hereto or thereto to be filed and recorded with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act; and the Railroad will from time to time do and perform any other act and will execute, acknowledge, deliver, file, register, deposit and record any and all further instruments required by law or reasonably requested by the Vendor for the purpose of proper protection, to the satisfaction of counsel for the Vendor, of its title to the Equipment and its rights under this Agreement or for the purpose of carrying out the intention of this Agreement; and the Railroad will promptly furnish to the Vendor certificates or other evidence of such filing, registering, depositing and recording satisfactory to the Vendor.

ARTICLE 20. Payment of Expenses. The Railroad will pay all reasonable costs and expenses (other than the fees and expenses of counsel for any Builder) incident to this Agreement and the first assignment of this Agreement, and any instrument supplemental or related hereto or thereto, including all fees and expenses of counsel for the first assignee of this Agreement, and all reasonable costs and expenses in connection with the transfer by any party of interests acquired in such first assignment. If the first assignee is not an agent, such assignee may appoint a bank or trust company located in either the Borough of Manhattan, City and State of New York, or Chicago, Illinois, having capital and surplus aggregating at least $40,000,000 to act as agent on its behalf to hold all the right, title and interests of the Builders under this Agreement assigned

to it, all upon and subject to the terms and conditions provided for in a written agreement to be entered into by the first assignee and such agent in form and substance satisfactory to the first assignee and such agent; and the Railroad hereby agrees to pay all reasonable costs and expenses of such Agent. Prior to appointing such an agent, the assignee shall consult with the Railroad and shall give reasonable consideration to the recommendations of the Railroad as to the bank or trust company to be appointed.

ARTICLE 21. Notice. Any notice hereunder to any of the parties designated below shall be deemed to be properly served if delivered or mailed to it at its chief place of business at the following specified addresses:

(a) to the Railroad, at 80 East Jackson Street, Chicago, Illinois 60604, attention of R. W. Harper, Vice President-Finance.

(b) to a Builder, at its address specified in Item 1 of Schedule A hereto, and

(c) to any assignee of the Vendor or of the Railroad, at such address as may have been furnished in writing to each of the other parties hereto by such assignee,

or at such other address as may have been furnished in writing by such party to the other parties to this Agreement.

ARTICLE 22. Article Heading; Effect and Modification of Agreement. All article headings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

This Agreement, including the Schedules hereto, exclusively states the rights of the Vendor and the Railroad with respect to the Equipment and supersedes all other agreements, oral or written, with respect to the Equipment. No variation or modification of this Agreement and no waiver of any of its provisions or conditions shall be valid unless in writing and signed by duly authorized officers of the Vendor and the Railroad.

ARTICLE 23. Law Governing. The Railroad warrants that its chief place of business and its chief executive offices are located in the State of Illinois. The terms

of this Agreement and all rights and obligations hereunder shall be governed by the laws of the State of Illinois; provided, however, that the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act and such additional rights arising out of the filing, recording or deposit hereof, if any, and of any assignment hereof as shall be conferred by the laws of the several jurisdictions in which this Agreement or any assignment hereof shall be filed, recorded or deposited.

ARTICLE 24. Execution. This Agreement may be executed in any number of counterparts, and such counterparts together shall constitute but one and the same contract. It shall not be necessary that any counterpart be signed by all the parties so long as any counterpart be signed by the Railroad and one or more Builders. If this Agreement is assigned by any Builder, the original counterpart of this Agreement shall be deemed to be the counterpart executed by such Builder and delivered to such assignee. Each Builder shall be bound hereunder, notwithstanding the failure of any other Builder to execute and deliver this Agreement, or perform its obligations hereunder. Although this Agreement is dated, for convenience, as of the date first set forth above, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

IN WITNESS WHEREOF, the parties hereto, each pursuant to due corporate authority, have caused this instrument to be executed in their respective corporate names by their officers, thereunto duly authorized, and their respective corporate seals to be hereunto affixed, duly attested, all as of the date first above written.

GENERAL MOTORS CORPORATION
(Electro-Motive Division),

by

_____
Vice President

[Corporate Seal]

Attest:

_____
Assistant Secretary

FMC CORPORATION,

by

_____
Vice President

[Corporate Seal]

Attest:

_____
Assistant Secretary

PULLMAN INCORPORATED
(Pullman-Standard division),

by

_____
Vice President

[Corporate Seal]

Attest:

_____
Assistant Secretary

GENERAL ELECTRIC COMPANY,

by

_____
Manager-Marketing,
Locomotive Products Department

[Corporate Seal]

Attest:

_____
Attesting Secretary

PACCAR INC,

by

_____
Vice President

[Corporate Seal]

Attest:

_____
Assistant Secretary

ACF INDUSTRIES, INCORPORATED,

by

Vice President

[Corporate Seal]

Attest:

Assistant Secretary

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY,

by

Vice President-Finance

[Corporate Seal]

Attest:

Assistant Secretary

STATE OF ILLINOIS,)
) ss.:
COUNTY OF COOK,)

On this day of 1975, before me personally appeared , to me personally known, who, being by me duly sworn, says that he is a Vice President of GENERAL MOTORS CORPORATION (Electro-Motive Division), that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

_____
Notary Public

[Notarial Seal]

My Commission Expires

STATE OF ILLINOIS,)
) ss.:
COUNTY OF COOK,)

On this day of 1975, before me personally appeared , to me personally known, who, being by me duly sworn, says that he is a Vice President of FMC CORPORATION, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

_____
Notary Public

[Notarial Seal]

My Commission Expires

STATE OF ILLINOIS,)
) ss.:
COUNTY OF COOK,)

On this day of 1975, before me personally appeared , to me personally known, who, being by me duly sworn, says that he is a Vice President of PULLMAN INCORPORATED (Pullman-Standard division), that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

_____
Notary Public

[Notarial Seal]

My Commission Expires

COMMONWEALTH OF PENNSYLVANIA,)
) ss.:
COUNTY OF ERIE,)

On this day of 1975, before me personally appeared , to me personally known, who, being by me duly sworn, says that he is Manager-Marketing, Locomotive Products Department, of GENERAL ELECTRIC COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

_____
Notary Public

[Notarial Seal]

My Commission Expires

STATE OF WASHINGTON,)
) ss.:
COUNTY OF KING,)

On this day of 1975, before me personally appeared , to me personally known, who, being by me duly sworn, says that he is a Vice President of PACCAR INC, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Notary Public

[Notarial Seal]

My Commission Expires

STATE OF NEW YORK,)
) ss.:
COUNTY OF NEW YORK,)

On this 3rd day of February 1975, before me personally appeared W. W. WILSON, to me personally known, who, being by me duly sworn, says that he is a Vice President of ACF INDUSTRIES, INCORPORATED, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Edwin F. Meyer
Notary Public

[Notarial Seal]

My Commission Expires

EDWIN F. MEYER
NOTARY PUBLIC, State of New York
No. 30-7917803
Qualified in Nassau County
Certificate filed in New York County
Commission Expires March 30, 1976

STATE OF ILLINOIS,)
) ss.:
COUNTY OF COOK,)

On this 31st day of January 1975, before me personally appeared R. W. HARPER, to me personally known, who, being by me duly sworn, says that he is a Vice President of THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

E. M. Arrguin
Notary Public

[Notarial Seal]

My Commission Expires
FEBRUARY 1, 1977

SCHEDULE A

Item 1: (a) General Motors Corporation (Electro-Motive Division), a Delaware corporation, La Grange, Illinois 60525.

(b) FMC Corporation, a Delaware corporation, 4700 Northwest Front Avenue, Portland, Oregon 97210.

(c) Pullman Incorporated (Pullman Standard division), a Delaware corporation, 200 South Michigan Avenue, Chicago, Illinois 60604.

(d) General Electric Company, a New York corporation, 2901 East Lake Road, Erie, Pennsylvania 16501.

(e) PACCAR Inc, a Delaware corporation, 1400 North 4th Street, Renton, Washington 98055.

(f) ACF Industries, Incorporated, a New Jersey corporation, 750 Third Avenue, New York, New York 10017.

Item 2: (a) (General Motors Corporation (Electro-Motive Division)): The Builder warrants that the Equipment will be built in accordance with the Specifications and the standards and requirements set forth in Article 2 of the Conditional Sale Agreement to which this Schedule is attached (hereinafter called the Agreement) and warrants that the Equipment will be free from defects in material (except as to specialties incorporated therein which were specified by the Railroad and not manufactured by the Builder) and workmanship under normal use and service; the Builder's obligations under this paragraph being limited to making good at its plant any part or parts of any unit of the Equipment which, within two years after the delivery of such unit to the Railroad or before such unit has been in scheduled service 250,000 miles (whichever event shall first occur), shall be returned to the Builder with transportation charges

prepaid and which the Builder's examination shall disclose to its satisfaction to have been thus defective.

This warranty of the Builder shall not apply (i) to any locomotive components which shall have been repaired or altered unless repaired or altered by the Builder or its authorized service representatives, if, in its judgment, such repairs or alterations affect the stability of a unit of the Equipment or (ii) to any unit of the Equipment which has been subject to misuse, negligence or accident.

This warranty is expressly in lieu of all other warranties expressed or implied, including any implied warranty of merchantability or fitness for a particular purpose, and of all other obligations or liabilities on the part of the Builder, except for its obligations under Articles 2, 3, 4 and 14 of the Agreement. The Builder neither assumes nor authorizes any person to assume for it any other liability in connection with the construction and delivery of the Equipment, except as aforesaid.

The Builder further agrees with the Railroad that neither the inspection as provided in Article 3 of the Agreement, nor any examination, nor the acceptance of any units of the Equipment as provided in Article 3 of the Agreement shall be deemed a waiver or a modification by the Railroad of any of its rights hereunder.

The Builder further agrees to hold harmless the Railroad from claims, costs and liability to the Builder's employees arising out of and in the course of their employment and while on the Railroad's premises or equipment except when traveling as revenue passengers on the Railroad's trains, and except that the Builder shall not be liable for the Railroad's sole negligence.

The Builder reserves the right to make change

in the design of, or add any improvements to, units of the Equipment at any time without incurring any obligation to make similar changes or additions in respect of units of Equipment previously delivered to the Railroad.

(b) (FMC Corporation): The Builder warrants that the Equipment will be built in accordance with the Specifications and the standards and conditions set forth in Article 2 of the Conditional Sale Agreement to which this Schedule is attached (hereinafter called the Agreement), and, except in cases of articles and materials specified by the Railroad and not manufactured by the Builder, warrants the Equipment to be free from defects in material and workmanship under normal use and service, the liability of the Builder under this warranty being limited, as the Railroad may elect: (i) to repair of the defect at the Builder's plant at Portland, Oregon; or (ii) to replacement of the defective part; or (iii) to the cost of repair or replacement according to the AAR Code of Rules Governing Condition of and Repairs to Freight and Passenger Cars with Interchange of Traffic.

The foregoing warranty of the Builder shall begin at the time of delivery of a unit of Equipment to the Railroad and terminate one year after such delivery. <u>This warranty is expressly in lieu of all other warranties expressed or implied on the part of the Builder,</u> except for the patent indemnification included in Article 14 of of the Agreement and except as hereinafter provided in this Schedule A, and the Builder neither assumes nor authorizes any person to assume for it any other warranty liability in connection with the construction and delivery of the Equipment.

The Builder further agrees that the Railroad shall have the right to repair the Equipment furnished by the Builder of its manufacture and that repair parts for such equipment may be made by, or for, the Railroad or purchased

in the open market, as the Railroad may determine; and it is agreed the Equipment may be repaired by other railroads no matter where the repair parts are obtained. This agreement includes the right on the part of the Railroad to purchase repair parts for such Equipment in anticipation of breakage, instead of waiting until the breakage actually occurs before ordering the repair parts.

The Builder's patent indemnification set forth in Article 14 of the Agreement does not apply to designs, systems, processes and formulae utilized by the Builder in or about the construction of the Equipment, or any unit thereof, as the result of specification by the Railroad, other than for patents or other rights controlled by the Builder; and the Railroad shall indemnify and save harmless the Builder and/or manufacturer and the Vendor for the use of any designs, systems, processes and formulae utilized by the Builder in or about the construction of the Equipment, or any unit thereof, as the result of specification by the Railroad, as against any patent infringement claims or damages as specified in said Article 14, other than for patents or other rights controlled by the Builder.

The Builder will hold harmless the Railroad from claims, costs and liability to Builder's employees arising out of and in the course of their employment and while on the Railroad's premises or equipment except when traveling as revenue passengers on the Railroad's trains.

(c) (Pullman Incorporated (Pullman-Standard division)): The Builder warrants that the Equipment will be built in accordance with the Specifications and the standards and requirements set forth in Article 2 of the Conditional Sale Agreement to which this Schedule is attached (hereinafter called the Agreement) and warrants the Equipment will be free from defects in material (except as to specialties incorporated therein specified by the Railroad

and not manufactured by the Builder) and workmanship and design under normal use and service, the Builder's obligation under this Item 2 being limited to making good at its plant any part or parts of any unit of Equipment which shall, within one year after the delivery of such unit of Equipment to the Railroad, be returned to the Builder with transportation charges prepaid and which examination by the Builder shall disclose to its satisfaction to have been thus defective.

The foregoing warranty is expressly in lieu of all other warranties, expressed or implied, including any implied merchantability or fitness for a particular purpose, and of all other obligations or liabilities on the part of the Builder, except for its obligations under Articles 2, 3, 4 and 14 of the Agreement, and the Builder neither assumes nor authorizes any person to assume for it any other liability in connection with the construction of the Equipment and delivery of the Equipment, except as aforesaid. It is further understood and agreed that in no event shall the Builder be liable for indirect or consequential damages of any kind.

The Builder further agrees with the Railroad that neither the inspection provided in Article 3 of the Agreement, nor any examination, nor the acceptance of any units of the Equipment as provided in said Article 3 shall be deemed a waiver or a modification by the Railroad of any of its rights under this Item 2.

(d) (General Electric Company): The Builder warrants that the Equipment will be built in accordance with the Specifications and the standards and requirements referred to in Article 2 of the Conditional Sale Agreement to which this Schedule is attached (hereinafter called the Agreement) and warrants the equipment will be free from defects in material (except as to specialties incorporated therein that are not of the Builder's own specification or design) and workmanship under normal use

and service; the Builder's obligations under this paragraph being limited to making good at its plant any part or parts of any unit of the Equipment which, within one year after the delivery of such unit to the Railroad, shall be returned to the Builder with transportation charges prepaid and which the Builder's examination shall disclose to its satisfaction to have been thus defective.

This warranty of the Builder shall not apply (i) to any locomotive components which shall have been repaired or altered, unless repaired or altered by the Builder or its authorized service representatives, if, in its judgment, such repairs or alterations affect the stability of a unit of the Equipment or (ii) to any unit of the Equipment which has been subject to misuse, negligence or accident.

THIS WARRANTY IS EXPRESSLY IN LIEU OF ALL OTHER WARRANTIES EXPRESSED OR IMPLIED, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND OF ALL OTHER OBLIGATIONS OR LIABILITIES ON THE PART OF THE BUILDER, EXCEPT FOR ITS OBLIGATIONS UNDER THE AGREEMENT. THE BUILDER NEITHER ASSUMES NOR AUTHORIZES ANY PERSON TO ASSUME FOR IT ANY OTHER LIABILITY IN CONNECTION WITH THE CONSTRUCTION AND DELIVERY OF THE EQUIPMENT, EXCEPT AS AFORESAID.

In no event shall the Builder be liable for special or consequential damages. The Builder's liability on any claim of any kind including negligence, or for any loss or damage arising out of, connected with, or resulting from, the Agreement, or from the performance or breach thereof, or from the manufacture, sale, delivery, resale, repair or use of any unit of the Equipment covered by, or furnished under, the Agreement, shall in no case exceed the Purchase Price of such unit of the Equipment involved in the claim, and upon the expiration of the warranty period specified above all such liability shall terminate. The Builder shall have no liability

for any unit of the Equipment or part thereof which becomes defective by reason of improper storage or application, misuse, negligence, accident or improper operation, maintenance, repairs or alterations on the part of the Railroad or any third party other than the Builder. The foregoing warranty shall constitute the sole remedy of the Railroad and the sole liability of the Builder.

It is understood that the Builder has the right to make changes in the design of, or to add improvements to units of the Equipment at any time without incurring any obligations to install, at the Builder's expense, the same or other locomotives sold by Builder.

The Builder further agrees with the Railroad that neither the inspection as provided in the Agreement, nor any examination, nor the acceptance of any units of the Equipment as provided in the Agreement shall be deemed a waiver or a modification by the Railroad of any of its rights under this Item 2.

(e) (PACCAR Inc): The Builder warrants that the Equipment will be built in accordance with the requirements, specifications and standards set forth in Article 2 of the Conditional Sale Agreement to which this Schedule is attached (hereinafter called the Agreement) and, except in cases of articles and materials specified by the Railroad and not manufactured by the Builder, warrants the Equipment to be free from defects in material and workmanship under normal use and service, the liability of the Builder under this warranty being limited, as the Railroad may elect: (i) to repair of the defects at the Builder's plant; or (ii) to replacement of a defective part; or (iii) to the cost of repair or replacement according to the AAR Code of Rules Governinig Condition of and Repairs to Freight and Passenger Cars with Interchange of Traffic. The Builder shall be given reasonable opportunity to verify any claim of defects in workmanship or materials.

The foregoing warranty of the Builder shall begin at the time of delivery of a unit of the Equipment to the Railroad and terminate two years after such delivery. THE BUILDER MAKES NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. The Railroad's right under the foregoing warranty shall be its sole and exclusive remedy and the Builder will have no liability for lost profit or for indirect, incidental, consequential or commercial losses. This warranty is expressly in lieu of all other warranties express or implied on the part of the Builder, except for the patent indemnification included in Article 14 of this Agreement. The Builder neither assumes nor authorizes any person to assume for it any other warranty liability in connection with the construction and delivery of the Equipment.

The Builder further agrees with the Railroad that neither the inspection as provided in Article 3 of the Agreement nor any examination nor the acceptance of any units of the Equipment as provided in said Article 3 shall be deemed a waiver or a modification by the Railroad of any of its rights under this Item 2.

The Builder will hold harmless the Railroad from claims, costs and liability to the Builder's employees arising out of and in the course of their employment and while on the Railroad's premises or equipment except when traveling as revenue passengers on the Railroad's trains.

(f) (ACF Industries, Incorporated): The Builder warrants that the Equipment will be built in accordance with the requirements, specifications and standards set forth in Article 2 of the Conditional Sale Agreement to which this Schedule is attached (hereinafter called this Agreement) and warrants the Equipment will be free from defects in material (except as to specialties incorporated therein which were specified or supplied by the Railroad and not manufactured by the Builder) and

workmanship under normal use and service, the Builder's obligation under this Item 2 being limited to making good at its factory any part or parts of any unit of the Equipment which shall be returned to the Builder with transportation charges prepaid, within one year after the delivery of such unit to the Railroad, and which the Builder's examination shall disclose to its satisfaction to have been thus defective. The foregoing warranty of the Builder is expressly in lieu of all other warranties, express or implied, including any implied warranty of merchantability or fitness for a particular purpose, and of all other obligations or liabilities under Articles 2, 3, 4 and 14 of the Agreement, and the Builder neither assumes nor authorizes any person to assume for it any other liability in connection with the construction and delivery of the Equipment except as aforesaid.

The Builder further agrees that neither the inspection as provided in Article 3 of this Agreement nor any examination nor the acceptance of any units of the Equipment as provided in said Article 3 shall be deemed a waiver or a modification by the Owner-Trustee of any of its rights under this Item 2.

SCHEDULE B

Builder	Type	Quantity	Builder's Specifications	Builder's Plant	Railroad's Numbers (inclusive)	Unit Base Price	Total Base Price	Time and Place of Delivery
(a) General Motors Corporation (Electro-Motive Divison)	2300 h.p. GP-39-2 locomotive	29	8075	McCook, Illinois	3626-3654	$355,200	$10,300,800	Prior to April 30, 1975, at Builder's Plant
(b) FMC Corporation	60' 9" 100-ton box car with roller bearings AAR Mechanical Designation XM	400	Job 17620	Portland, Oregon	611000-611399	36,000	14,400,000	March-April, 1975, at Builder's Plant
(c) Pullman Incorporated (Pullman-Standard division)	60' 9" 100-ton box car with roller bearings; AAR Mechanical Designation XL	216	Lot Number 9783	Bessemer, Alabama	611400-611615	33,100	7,149,600	April-May, 1975, at Bessemer, Ala.

SCHEDULE B (Cont'd)

Builder	Type	Quantity	Builder's Specifications	Builder's Plant	Railroad's Numbers (inclusive)	Unit Base Price	Total Base Price	Time and Place of Delivery
(d) General Electric Company	U-36-C, 3600 h.p. locomotive; AAR Mechanical Designation C-C	6	3690E	Erie, Pennsylvania	8794-8799	$436,300	$ 2,617,800	Prior to March 1, 1975, at Erie, Pa.
(e) PACCAR Inc	52' 6", 70-ton insulated box car with roller bearing trucks, cushioned underframe, dual Air'Pak load dividers, 16' doors;	100	PC-339, as revised	Renton, Washington	522800-522899	37,100	3,710,000	Prior to March 1, 1975, at Builder's Plant
(f) ACF Industries, Incorporated	4600 cu. ft., 100-ton covered hopper car with roller bearing trucks and interior coating	400	11-01312, dated November 11, 1974	Huntington, West Virginia	314800-315199	30,000	12,000,000	February-March, 1975, at Russell, Ky.

7822
RECORDATION NO. _____ Filed & Recorded
FEB 6 1975 -10 55 AM
INTERSTATE COMMERCE COMMISSION

CONDITIONAL SALE AGREEMENT

Dated as of January 15, 1975

Among

GENERAL MOTORS CORPORATION
(Electro-Motive Division),
FMC CORPORATION,
PULLMAN INCORPORATED (Pullman Standard division)
GENERAL ELECTRIC COMPANY,
PACCAR INC,
ACF INDUSTRIES, INCORPORATED

and

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY

CONDITIONAL SALE AGREEMENT dated as of January 15, 1975, among each of the corporations named in Item 1 of Schedule A hereto and THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, a Delaware corporation (hereinafter called the Railroad).

WHEREAS each of the corporations named in Item 1 of Schedule A hereto severally have agreed to construct, sell and deliver to the Railroad, and the Railroad has agreed to purchase, the equipment described in Schedule B hereto (hereinafter called the Equipment);

NOW, THEREFORE, in consideration of the mutual promises, covenants and agreements hereinafter set forth, the parties hereto do hereby agree as follows:

ARTICLE 1. Certain Definitions; Obligations of Builders Several; Additional Agreements. The term "Vendor", whenever used in this Agreement, means, before any assignment of any of their rights hereunder, the respective corporations named in Item 1 of Schedule A hereto and any successor or successors for the time being to their respective manufacturing properties and businesses, and, after any such assignment, both any assignee or assignees for the time being of such particular assigned rights as regards such rights, and also any assignor as regards any rights hereunder that are retained or excluded from any assignment. Whenever the term "Vendor" refers to a corporation named in Item 1 of Schedule A hereto, such term shall mean any or all such corporations, as the context may require. The term "Builder", whenever used in this Agreement, means, both before and after any such assignment, each of the respective corporations (as to the units of Equipment to be constructed by such corporation and sold hereunder) named in Item 1 of Schedule A hereto and any successor or successors for the time being to their respective manufacturing properties and businesses.

The rights and obligations of the Builders under this Agreement are several in accordance with their interests and not joint. Accordingly, whenever this Agreement, by the use of such designation as "the Vendor", "such Builder" or other similar term, confers a right or imposes an obligation upon any corporation named in Item 1 of Schedule A hereto or its successor, such right or obligation shall be

construed to accrue to or to be enforceable against only the specific corporation furnishing the units of Equipment giving rise to such right or obligation and its successors as herein provided.

Additional Agreements, if any, set forth in Schedule A hereto shall be deemed to be a part of this Agreement as fully as though set forth in full in this instrument.

ARTICLE 2. Construction and Sale. Pursuant to this Agreement, each Builder shall construct the units of the Equipment to be constructed by it as described in Schedule B hereto (such Equipment with respect to each Builder being hereinafter sometimes called its Equipment) and will sell and deliver to the Railroad, and the Railroad will purchase from such Builder and accept delivery of and pay for (as hereinafter provided), such Equipment, each unit of which shall be constructed in accordance with the specifications set forth therefor in Schedule B hereto and in accordance with such modifications thereof as may be agreed upon in writing between such Builder and the Railroad (which specifications and modifications, if any, are hereinafter called the Specifications). The design, quality and component parts of each unit of the Equipment shall conform, on the date of completion of manufacture of each thereof, to all Department of Transportation and Interstate Commerce Commission requirements and specifications and to all standards recommended by the Association of American Railroads reasonably interpreted as being applicable to equipment of the character of such units of the Equipment and each unit of the Equipment (except to the extent, if any, referred to in Schedule A hereto and/or in Article 8 hereof) will be new railroad equipment.

ARTICLE 3. Inspection and Delivery. Each Builder will deliver the units of its Equipment to the Railroad at the place or places specified in Schedule B hereto (or if Schedule B does not specify a place or places, at the place or places designated from time to time by the Railroad), freight charges, if any, prepaid, in accordance with the delivery schedule set forth in Schedule B hereto; provided, however, that no Builder shall have any obligation to deliver any unit of its Equipment hereunder at any time after the commencement of any proceedings specified in clause (c) or (d) of Article 16 hereof or if any event of default (as described in Article 16 hereof), or event which with lapse of time and/or demand would constitute such an event of default, shall have occurred.

Each Builder's obligation as to time of delivery is subject, however, to delays resulting from causes beyond the Builder's reasonable control, including but not limited to acts of God, acts of government such as embargoes, priorities and allocations, war or war conditions, riot or civil commotion, sabotage, strikes, differences with workmen, accidents, fire, flood, explosion, damage to plant, equipment or facilities, delays in receiving necessary materials or delays of carriers or subcontractors.

Notwithstanding the preceding provisions of this Article 3, any Equipment not delivered, accepted and settled for pursuant to Article 4 hereof on or before August 31, 1975, shall be excluded herefrom. If any unit or units of Equipment shall be excluded from this Agreement pursuant to the immediately preceding sentence, the Builder or Builders of such unit or units and the Railroad shall execute an agreement supplemental hereto limiting this Agreement to the units of Equipment not so excluded herefrom. If a Builder's failure to deliver Equipment so excluded from this Agreement resulted from one or more of the causes set forth in the immediately preceding paragraph, the Railroad shall nevertheless be obligated to accept such Equipment and pay the full purchase price therefor, determined as provided in this Agreement, if and when such Equipment shall be completed and delivered by such Builder, such payment to be in cash on the delivery of such Equipment, either directly or, in case the Railroad shall arrange therefor, by means of a conditional sale agreement, equipment trust or such other appropriate method of financing as the Railroad shall determine and as shall be reasonably acceptable to such Builder.

During construction, the Equipment shall be subject to inspection and approval by the authorized inspectors of the Railroad and each Builder shall grant to such authorized inspectors reasonable access to its plant. Each Builder agrees to inspect all materials used in the construction of the Equipment in accordance with the standard quality control practices of such Builder. Upon completion of each unit or of a number of units of the Equipment, such unit or units shall be presented to an inspector of the Railroad for inspection at the place specified for delivery of such unit or units, and if each such unit conforms to the Specifications, requirements and standards applicable thereto, such inspector or an authorized representative of the Railroad shall execute and deliver to such Builder a certificate of acceptance (hereinafter called the Certificate of Accep-

tance) stating that such unit or units have been inspected and accepted on behalf of the Railroad and are marked in accordance with Article 7 hereof; provided, however, that such Builder shall not thereby be relieved of its warranty referred to in Article 14 hereof.

On delivery of each such unit hereunder at the place specified for delivery, the Railroad will assume the responsibility and risk of, and shall not be released from its obligations hereunder in the event of, any damage to or the destruction or loss of such unit; provided, however, that such delivery shall not thereby relieve a Builder of its warranty referred to in Article 14 hereof.

ARTICLE 4. Purchase Price and Payment. The base price or prices per unit of the Equipment are set forth in Schedule B hereto. Such base price or prices are subject to such increase or decrease as may be agreed to by the Builder thereof and the Railroad. The term "Purchase Price" as used herein shall mean the base price or prices as so increased or decreased. If the aggregate Purchase Price of Equipment for which settlement has been made under this Agreement is in an amount not less than $50,250,000, the Railroad may, at its option, exclude from this Agreement any unit or units of Equipment for which settlement has not been made and the appropriate Builder or Builders of such unit or units (and any assignee of such Builder or Builders) shall, upon request of the Railroad enter into an agreement supplemental hereto evidencing such exclusion. The Railroad agrees to purchase any such unit or units so excluded from this Agreement and to pay the Builder in cash on the date such unit or units would otherwise have been settled for under this Agreement either directly, or, if the Builder and the Railroad shall mutually agree, by means of a conditional sale, equipment trust or other appropriate method of financing.

For the purpose of making settlement, the Equipment shall be divided into such number of groups (not more than three) of units of the Equipment, delivered to and accepted by the Railroad (each such group being hereinafter called a Group), as the respective Builder, the Railroad and the Vendor may agree to.

The Railroad hereby acknowledges itself to be indebted to the Vendor in the amount of, and hereby promises to pay in cash to the Vendor at such place as the Vendor

may designate, the Purchase Price of the Equipment, as follows:

(a) on each Closing Date (as hereinafter defined) the amount, if any, by which (x) the aggregate Purchase Price of all units of the Equipment for which settlement has theretofore and is then being made, as stated in the invoice or invoices presented in respect of such Closing Date (said invoiced prices being hereinafter called the Invoiced Purchase Prices), exceeds (y) the sum of $50,000,000 and any amount or amounts previously paid or payable with respect to the Invoiced Purchase Prices pursuant to this subparagraph (a); and

(b) in 15 consecutive equal (to the nearest multiple of $1,000, except for appropriate adjustment of the final instalment in case the amount payable pursuant to this subparagraph (b) shall not, when divided by 15, result in an amount ending in a multiple of $1,000) annual instalments, as hereinafter provided, an amount equal to the aggregate of the Invoiced Purchase Prices for all the Equipment less the amount paid or payable with respect thereto pursuant to subparagraph (a) of this paragraph (the aggregate of said instalments being hereinafter called the Conditional Sale Indebtedness).

In the event that on any Closing Date the final Purchase Price of any Group has not been finally determined, the invoice presented may be a preliminary invoice, subject to upward adjustment upon determination of the final Purchase Price, and a supplemental invoice may be presented by the Builder at least ten days prior to any subsequent Closing Date for settlement on such subsequent Closing Date for any increase in the Purchase Price; it being understood and agreed by the Builders that any preliminary invoice or invoices presented by the Builders in respect of any Group shall be in amount not in excess of the final Purchase Price of such Group.

The instalments of the Conditional Sale Indebtedness payable pursuant to subparagraph (b) of the third paragraph of this Article 4 shall be payable annually on May 15 in each year commencing on May 15, 1976, to and including May 15, 1990. The unpaid portion of the Conditional Sale Indebtedness shall bear interest from the respective Closing Dates on which such indebtedness was incurred at the rate of 9-3/4% per annum. Such interest shall be payable, to the extent accrued, on May 15 and November 15 in each year, commencing May 15, 1975.

The term "Closing Date" with respect to any Group of the Equipment shall mean March 3, 1975, and such other dates (after March 3, 1975, and prior to August 31, 1975,) not more than 10 business days following presentation by a Builder to the Railroad of the invoice and the Certificate or Certificates of Acceptance for such Group, as shall be fixed by the Railroad by written notice delivered to the Vendor at least six business days prior to the Closing Date designated therein; it being understood and agreed, however, that the aggregate Purchase Price of all Equipment settled for on Closing Dates prior to April 1, 1975, shall not exceed $26,000,000. The term "business days" as used herein means calendar days, excluding Saturdays, Sundays and any other day on which banking institutions in Chicago, Illinois, or New York, New York, are authorized to remain closed.

All interest under this Agreement shall be calculated on the basis of a 360-day year of twelve 30-day months.

The Railroad will pay, to the extent legally enforceable, interest at the rate of 10-3/4% per annum upon all amounts remaining unpaid after the same shall have become due and payable pursuant to the terms hereof, anything herein to the contrary notwithstanding.

All payments provided for in this Agreement shall be made in such coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts. Except as provided in Article 8 hereof, the Railroad shall not have the privilege of prepaying any instalment of its indebtedness hereunder prior to the date it becomes due.

In the event the Vendor, pursuant to Article 15 hereof, assigns the right to receive the payments herein provided to be made by the Railroad, the assignee thereof may request the Railroad to make and the Railroad shall make such payments to it at such address as shall be supplied to the Railroad by the assignee.

ARTICLE 5. Taxes. All payments to be made by the Railroad hereunder will be free of expense to the Vendor for collection or other charges and will be free of expense to the Vendor with respect to the amount of any local, state, federal or foreign taxes (other than net income, gross receipts [except gross receipts taxes in the nature of or in lieu of sales or use taxes], excess profits and similar taxes) or license fees, assessments, charges, fines or penal-

ties hereafter levied or imposed upon or in connection with or measured by, this Agreement or any sale, use, payment, shipment, delivery or transfer of title under the terms hereof (all such expenses, taxes, license fees, assessments, charges, fines and penalties being hereinafter called impositions), all of which impositions the Railroad assumes and agrees to pay on demand. The Railroad will also pay promptly all impositions which may be imposed upon the Equipment delivered to it or for the use or operation thereof or upon the earnings arising therefrom or upon the Vendor solely by reason of its ownership thereof and will keep at all times all and every part of the Equipment free and clear of all impositions which might in any way affect the title of the Vendor or result in a lien upon any part of the Equipment; provided, however, that the Railroad shall be under no obligation to pay any impositions of any kind so long as it is contesting in good faith and by appropriate legal proceedings such impositions and the nonpayment thereof does not, in the opinion of the Vendor, adversely affect the property or rights of the Vendor in or to the Equipment or otherwise under this Agreement. If any such impositions shall have been charged or levied against the Vendor directly and paid by the Vendor, the Railroad shall reimburse the Vendor upon presentation of an invoice therefor, and any amounts so paid by the Vendor shall be secured by and under this Agreement; provided, however, that the Railroad shall not be obligated to reimburse the Vendor for any impositions so paid unless the Vendor shall have been legally liable with respect thereto (as evidenced by an opinion of counsel for the Vendor) or unless the Railroad shall have approved the payment thereof.

ARTICLE 6. Title to the Equipment. The Vendor shall and hereby does retain the full legal title to and property in the Equipment until the Railroad shall have made all its payments under this Agreement and shall have kept and performed all its agreements herein contained, notwithstanding the delivery of the Equipment to and the possession and use thereof by the Railroad as provided in this Agreement. Any and all additions to the Equipment and any and all replacements of the Equipment and of parts thereof and additions thereto shall constitute accessions to the Equipment and shall be subject to all the terms and conditions of this Agreement and included in the term "Equipment" as used in this Agreement.

Except as otherwise specifically provided in Article 8 hereof, when and only when the full indebtedness in

respect of the Purchase Price of the Equipment, together with interest and all other payments as herein provided, shall have been paid, and all the Railroad's obligations herein contained shall have been performed by the Railroad, absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Railroad without further transfer or action on the part of the Vendor. However, the Vendor, if so requested by the Railroad at that time, will (a) execute a bill or bills of sale for the Equipment transferring its title thereto and property therein to the Railroad, or upon its order, free of all liens, security interests and other encumbrances created or retained hereby and deliver such bill or bills of sale to the Railroad at its address referred to in Article 21 hereof, (b) execute and deliver at the same place, for filing, recording or depositing in all necessary public offices, such instrument or instruments in writing as may be necessary or appropriate in order then to make clear upon the public records the title of the Railroad to the to the Equipment and (c) pay to the Railroad any money paid to the Vendor pursuant to Article 8 hereof and not theretofore applied as therein provided. The Railroad hereby waives and releases any and all rights, existing or that may be acquired, in or to the payment of any penalty, forfeit or damages for failure to execute and deliver such bill or bills of sale or instrument or instruments or to file any certificate of payment in compliance with any law or statute requiring the filing of the same, except for failure to execute and deliver such bill or bills of sale or instrument or instruments or to file such certificate within a reasonable time after written demand by the Railroad.

ARTICLE 7. Marking of the Equipment. The Railroad will cause each unit of the Equipment to be kept numbered with its identifying number as set forth in Schedule B hereto, or in the case of Equipment not there listed such identifying number as shall be set forth in any amendment or supplement hereto extending this Agreement to cover such Equipment, and will keep and maintain, plainly, distinctly, permanently and conspicuously marked on each side of each unit, in letters not less than one inch in height, the words "Ownership subject to a Security Interest Filed under the Interstate Commerce Act, Section 20c" or other appropriate markings approved by the Vendor, with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the Vendor's title to and property in the Equipment and its rights under this Agreement. The

Railroad will not place any such unit in operation or exercise any control or dominion over the same until such markings have been made thereon and will replace promptly any such markings which may be removed, defaced or destroyed. The Railroad will not change the number of any unit of the Equipment except in accordance with a statement of new number or numbers to be substituted therefor, which statement previously shall have been filed with the Vendor by the Railroad and filed, recorded and deposited by the Railroad in all public offices where this Agreement shall have been filed, recorded and deposited.

Except as provided in the immediately preceding paragraph, the Railroad will not allow the name of any person, association or corporation to be placed on any unit of the Equipment as a designation that might be interpreted as a claim of ownership; provided, however, that the Railroad may cause the Equipment to be lettered with the names or initials or other insignia of the Railroad or its affiliates.

ARTICLE 8. Casualty Occurrences. In the event that any unit of the Equipment shall be worn out, lost, stolen, destroyed, irreparably damaged or otherwise rendered permanently unfit for use from any cause whatsoever, or taken or requisitioned by condemnation or otherwise (such occurrences being hereinafter called Casualty Occurrences), the Railroad shall promptly (after it has knowledge of such Casualty Occurrence) and fully inform the Vendor in regard thereto. When the aggregate Casualty Value (as defined herein) of all units having suffered a Casualty Occurrence (exclusive of units having suffered a Casualty Occurrence with respect to which a payment shall have been made to the Vendor pursuant to this Article 8) hereunder shall exceed $250,000 (or such lesser amount as the Railroad may elect), the Railroad, within 90 days after the Railroad has knowledge of such event, shall file with the Vendor a certificate of an officer of the Railroad setting forth the Casualty Value of each unit of the Equipment having suffered a Casualty Occurrence and shall pay to the Vendor a sum equal to the aggregate Casualty Value as of the date of such payment of such unit or units of the Equipment having suffered a Casualty Occurrence, together with interest on such sum so being prepaid accrued to the date of such prepayment, but without premium, (the Railroad hereby agreeing to make such payment of accrued interest to the Vendor at the time it makes payment of such Casualty Value to the Vendor); provided, however, if and so long as no event of default

shall have occurred and be continuing hereunder, in lieu of making all or any portion of such payment to the Vendor, the Railroad may, on or before the expiration of such 90-day period, cause to be transferred to the Vendor a replacement unit or units of standard gauge railroad equipment (other than passenger or work equipment of types other than locomotives) and receive credit against the Casualty Value payment it would otherwise have been required to make in an amount equal to the value threof. The value of any unit or units of replacement equipment shall be equal to the cost thereof, if new, as specified in the invoice therefor delivered to the Vendor or, if not new, the lesser of (y) the fair market value thereof or (z) the original cost thereof less depreciation at a rate equal to 1/15th of such cost for each year in service, all as set forth in a certificate of an officer of the Railroad delivered to the Vendor at the time of such replacement. Any unit of replacement equipment shall have a remaining useful life (as evidenced by a certificate of an operating officer at the Railroad) at least as long as that which the Equipment being replaced would have had but for the Casualty Occurrence. In case any money is applied to prepay indebtedness, it shall be so applied, together with the interest due thereon, on the business day next following receipt by the Vendor of the appropriate payment, to reduce instalments of the aggregate Conditional Sale Indebtedness thereafter falling due in the inverse order of maturity thereof without premium.

The Casualty Value of each unit of the Equipment (other than a replacement unit) shall be deemed to be that amount which bears the same ratio to the original Purchase Price thereof (less, in the event that the Railroad shall have made any payment or payments under the provisions of subparagraph (a) of the third paragraph of Article 4 hereof, an amount which bears the same ratio to the aggregate of all such payments as the original Purchase Price of such unit bears to the original aggregate Purchase Price of all the Equipment) as the unpaid Conditional Sale Indebtedness (without giving effect to any prepayments then or theretofore made pursuant to this Article 8) as of the date payment is made with respect to such Casualty Occurrence bears to the original Conditional Sale Indebtedness. The Casualty Value of each replacement unit shall be deemed to be that amount which bears the same ratio to the portion of the cost thereof paid by the Vendor as the unpaid Conditional Sale Indebtedness ness (without giving effect to any prepayments then or theretofore made pursuant to this Article 8) as of the date payment

is made with respect to such Casualty Occurrence bears to the unpaid Conditional Sale Indebtedness (without giving effect to any such prepayments) as of the date of acquisition by the Vendor of such replacement unit.

The Railroad will cause any replacement unit or units to be marked as provided in Article 7 hereof. Any and all such replacements of Equipment shall constitute accessions to the Equipment and shall be subject to all appropriate terms and conditions of this Agreement as though part of the original Equipment delivered hereunder and shall be included in the term "Equipment" as used in this Agreement. Title to all such replacement units shall be free and clear of all liens and encumbrances except the liens permitted by the second paragraph of Article 12 hereof and shall be taken initially and shall remain in the name of the Vendor subject to the provisions hereof, and the Railroad shall execute, acknowledge, deliver, file, record or deposit all such documents and do any and all such acts as may be necessary to cause such replacement units to come under and be subject to this Agreement. All such replacement units shall be guaranteed and warranted in like manner as is customary at the time for similar equipment. Whenever the Railroad shall cause to be transferred to the Vendor a unit or units of replacement Equipment, the Railroad shall deliver to the Vendor an executed counterpart of an opinion of counsel covering the matters set forth in this paragraph.

In order to facilitate the sale or other disposition of any Equipment suffering a Casualty Occurrence, in respect of which the Railroad shall have paid to the Vendor the Casualty Value and/or shall have caused to be transferred to the Vendor a unit or units of replacement Equipment, the Vendor shall, upon request of the Railroad, execute and deliver to the Railroad or the Railroad's vendee, assignee or nominee, a bill of sale (without warranties) for such Equipment, and such other documents as may be required to release such Equipment from the terms and scope of this Agreement, in such form as may be reasonably requested by the Railroad.

The Railroad will at all times prior to the payment in full of the Conditional Sale Indebtedness together with interest thereon and all other payments required hereby, at its own expense, cause to be carried and maintained insurance in respect of the Equipment consisting of locomotives at the time subject hereto, and public liability insurance,

in amounts and against risks customarily insured against by railroad companies on similar equipment, and in any event in amounts and against risks comparable to those insured against by the Railroad on equipment owned by it; provided, however, that the Railroad may act as self-insurer in respect of losses and damage not exceeding $3,000,000 in respect of any single occurrence.

ARTICLE 9. Maintenance; Compliance with Laws and Rules. The Railroad will at all times maintain the Equipment or cause the Equipment to be maintained in good order and repair at its own expense.

During the term of this Agreement, the Railroad will at all times comply in all respects with all laws of the jurisdictions in which its operations involving the Equipment may extend, with the interchange rules of the Asociation of American Railroads and with all lawful rules of the Department of Transportation, Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Equipment, to the extent that such laws and rules affect the title, operation or use of the Equipment, and in the event that such laws or rules require any alteration, replacement or addition of any part on any unit of the Equipment, the Railroad will conform therewith, at its own expense; provided, however, that the Railroad may, in good faith, contest the validity or application of any such law or rule in any reasonable manner which does not, in the opinion of the Vendor, adversely affect the property or rights of the Vendor under this Agreement.

ARTICLE 10. Reports and Inspections. On or before March 31 in each year, commencing with the calendar year 1976, the Railroad shall furnish to the Vendor an accurate statement signed by an officer of the Railroad (a) setting forth as at the preceding December 31 the amount, description and numbers of all units of the Equipment that have suffered a Casualty Occurrence during the preceding calendar year (or since the date of this Agreement in the case of the first such statement) or that have been withdrawn from use pending repairs (other than running repairs) and such other information regarding the condition and state of repair of the Equipment as the Vendor may reasonably request and (b) stating that, in the case of all Equipment repaired or repainted during the period covered by such statement, the numbers and markings required by Article 7 hereof have

been preserved or replaced. During the term of this Agreement, the Vendor shall have the right, by its agents, to inspect the Equipment and the Railroad's records with respect thereto at such times and locations as the Vendor may reasonably request.

The Railroad shall furnish (i) as soon as available and in any event within 60 days after the end of each quarterly period, except the last, of each fiscal year, a balance sheet of the Railroad (as filed with the Interstate Commerce Commission (hereinafter called the ICC)) as at the end of such period, and an income statement of the Railroad as filed with the ICC for the period beginning on the first day of such fiscal year and ending on the date of such balance sheet, setting forth comparative figures for the corresponding period of the preceding fiscal year, all in reasonable detail and certified by the principal accounting officer of the Railroad, and (ii) as soon as available and in any event within 120 days after the end of each fiscal year, a copy of the Railroad's annual report as filed with the ICC, which shall include the balance sheet, income statement and statement of retained income of the Railroad certified by the principal accounting officer of the Railroad and which shall be accompanied by a letter from the independent accountants for Santa Fe Industries, Inc., the parent of the Railroad, stating that such financial statements, restated to generally accepted accounting principles, were included in the certified consolidated financial statement of Santa Fe Industries, Inc., and that such certified financial statements are not qualified with respect to the Railroad and, in the event a restatement to generally accepted accounting principles is required, such letter shall be accompanied by a schedule which shall describe such restatement in reasonable detail.

ARTICLE 11. Possession and Use. The Railroad, so long as an event of default shall not have occurred under this Agreement and be continuing, shall be entitled to the possession of the Equipment and the use thereof upon the lines of railroad owned or operated by it either alone or jointly with others and whether under lease or otherwise, or upon the lines of railroad owned or operated by any railroad company controlled by, or under common control with, the Railroad, or over which it has trackage rights, or upon connecting and other carriers in the usual interchange of traffic, from and after delivery of the Equipment by the Builder to the Railroad, but only upon and subject to all the terms and conditions of this Agreement.

ARTICLE 12. Prohibition Against Liens. The Railroad will pay or discharge any and all sums claimed by any party from, through or under the Railroad or its successors or assigns which, if unpaid, might become a lien, charge or security interest on the Equipment, or any unit thereof, equal or superior to the Vendor's title thereto or property therein; provided, however, that the Railroad shall be under no obligation to pay or discharge any such claim so long as it is contesting in good faith and by appropriate legal proceedings such claim and the nonpayment thereof does not, in the opinion of the Vendor, adversely affect the property or rights of the Vendor in or to the Equipment or otherwise under this Agreement. Any amounts paid by the Vendor in discharge of liens, charges or security interests upon the Equipment shall be secured by and under this Agreement.

This covenant will not be deemed breached by reason of liens for taxes, assessments or governmental charges or levies, in each case not due and delinquent, or undetermined or inchoate materialmen's, mechanics', workmen's, repairmen's or other like liens arising in the ordinary course of business and, in each case, not delinquent.

ARTICLE 13. Railroad's Indemnities. The Railroad agrees to indemnify, protect and hold harmless the Vendor from and against all losses, damages, injuries, liabilities, claims and demands whatsoever, regardless of the cause thereof, and expenses in connection therewith, including counsel fees, arising out of retention by the Vendor of title to the Equipment, the use and operation thereof by the Railroad during the period when title thereto remains in the Vendor or the transfer of title to the Equipment by the Vendor pursuant to any of the provisions of this Agreement, except, however, any losses, damages, injuries, liabilities, claims and demands whatsoever arising out of any tort, breach of warranty or failure to perform any covenant hereunder by any Builder. This covenant of indemnity shall continue in full force and effect notwithstanding the full payment of all sums due under this Agreement, or the satisfaction, discharge or termination of this Agreement in any manner whatsoever.

ARTICLE 14. Patent Indemnities; Builder's Warranty of Material and Workmanship. Except in cases of articles or materials specified by the Railroad and not manufactured by a Builder and in cases of designs, systems, processes, formulae or combinations specified by the Railroad and not

developed or purported to be developed by any Builder, each Builder agrees to indemnify, protect and hold harmless the Railroad from and against any and all liability, claims, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Railroad, its assigns or the users of its respective Equipment because of the use in or about the construction or operation of any of the Equipment of any design, system, process, formula, combination, article or material which infringes or is claimed to infringe on any patent or other right. The Railroad likewise will indemnify, protect and hold harmless the Vendor from and against any and all liability, claims, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Vendor because of the use in or about the construction or operation of any of the Equipment of any article or material specified by the Railroad and not manufactured by a Builder or of any design, system, process, formula or combination specified by the Railroad and not developed or purported to be developed by a Builder which infringes or is claimed to infringe on any patent or other right. Each Builder agrees to and hereby does, to the extent legally possible without impairing any claim, right or cause of action hereinafter referred to, assign, set over and deliver to the Railroad every claim, right and cause of action which such Builder has or hereafter shall have against the seller or sellers of any designs, systems, processes, formulae, combinations, articles or materials specified by the Railroad and purchased or otherwise acquired by such Builder for use in or about the construction or operation of any of the Equipment on the ground that any such design, system, process, formula, combination, article or material or operation thereof infringes or is claimed to infringe on any patent or other right. Each Builder further agrees to execute and deliver to the Railroad or the users of the Equipment all and every such further assurance as may be reasonably requested by the Railroad more fully to effectuate the assignment and delivery of every such claim, right and cause of action. Each Builder will give notice to the Railroad of any claim known to such Builder from which liability may be charged against the Railroad hereunder and the Railroad will give notice to the appropriate Builder of any claim known to the Railroad from which liability may be charged against any Builder hereunder. Such covenants of indemnity shall continue in full force and effect notwithstanding the full payment of all sums due under this Agreement, or the satisfaction,

discharge or termination of this Agreement in any manner whatsoever.

Each Builder's warranty of material and workmanship is set forth in Schedule A hereto.

ARTICLE 15. Assignments. The Railroad will not sell, assign, transfer or otherwise dispose of its rights under this Agreement or, except as provided in Article 11 hereof, transfer the right to possession of any unit of the Equipment without first obtaining the written consent of the Vendor. A sale, assignment, transfer or disposition to a railroad company organized under the laws of the United States of America or any of the states thereof which shall acquire all or substantially all the lines of railroad of the Railroad, and which, by execution of an appropriate instrument satisfactory to the Vendor, shall assume and agree to perform each of, and all, the obligations and covenants of the Railroad under this Agreement, shall not be deemed a breach of this covenant.

All or any of the rights, benefits and advantages of the Vendor under this Agreement, including the right to receive the payments herein provided to be made by the Railroad, may be assigned by the Vendor and reassigned by any assignee at any time or from time to time. No such assignment shall subject any assignee to, or relieve any Builder from, any of the obligations of such Builder to construct and deliver the Equipment in accordance with this Agreement or to respond to its respective warranties and indemnities contained or referred to in Article 14 hereof, or relieve the Railroad of any of its obligations to such Builders under Articles 2, 3, 4, 5, 13 and 14 hereof, Schedule A hereto and this Article 15 or of any other obligation which, according to its terms or context, is intended to survive an assignment.

Upon any such assignment either the assignor or the assignee shall give written notice to the Railroad, together with a counterpart or copy of such assignment, stating the identity and post office address of the assignee, and such assignee shall by virtue of such assignment acquire all the assignor's right, title and interest in and to the Equipment and this Agreement, or in and to a portion thereof, as the case may be, subject only to such reservations as may be contained in such assignment. From and after the receipt by the Railroadd of the notification of any such

assignment, all payments thereafter to be made by the Railroad under this Agreement shall, to the extent so assigned, be made to the assignee in such manner as it may direct.

The Railroad recognizes that it is the custom of railroad equipment manufacturers to assign conditional sale agreements and understands that the assignment of this Agreement, or of some of or all the rights of the Vendor hereunder, is contemplated. The Railroad expressly represents, for the purpose of assurance to any person, firm or corporation considering the acquisition of this Agreement or of all or any of the rights of the Vendor hereunder and for the purposes of inducing such acquisition, that in the event of such assignment by the Vendor as hereinbefore provided, the rights of such assignee to the entire unpaid indebtedness in respect of the Purchase Price or such part thereof as may be assigned, together with interest thereon, as well as any other rights hereunder which may be so assigned, shall not be subject to any defense, setoff, counterclaim or recoupment whatsoever arising out of any breach of any obligation of a Builder with respect to the Equipment or the manufacture, construction, delivery or warranty thereof, or with respect to any indemnity herein contained, nor subject to any defense, setoff, counterclaim or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to the Railroad by a Builder. Any and all such obligations, howsoever arising, shall be and remain enforceable by the Railroad against and only against the respective Builders.

The Railroad will (a) in connection with each settlement for the Equipment subsequent to such assignment, deliver to the assignee, at least five business days prior to the Closing Date for the Group fixed in the notice by the Railroad, all documents required by the terms of such assignment to be delivered to such assignee in connection with such settlement, in such number of counterparts or copies as may reasonably be requested, except for any opinion of counsel for such assignee, and (b) furnish to such assignee such number of counterparts of any other certificate or paper required by the Vendor as may reasonably be requested.

If this Agreement shall have been assigned by the Builders and the assignee shall not make payment to a Builder with respect to units of its Equipment as provided in the instrument making such assignment, such Builder will promptly notify the Railroad of such event and, if such

amount shall not have been previously paid by such assignee, the Railroad will, not later than 90 days after the date such payment was due, pay or cause to be paid to such Builder the aggregate unpaid Purchase Price of such units of its Equipment, together with interest from the day such payment was due to the date of payment by the Railroad at the highest prime rate of interest charged by any of the four New York City banks having the largest total assets, in effect on the date such payment was due.

ARTICLE 16. Defaults. In the event that any one or more of the following events of default shall occur and be continuing, to wit:

(a) the Railroad shall fail to pay in full any indebtedness in respect of the Purchase Price of the Equipment or any other sum payable by the Railroad as provided in this Agreement within ten days after payment thereof shall be due hereunder; or

(b) the Railroad shall, for more than 30 days after the Vendor shall have demanded in writing performance thereof, fail or refuse to comply with any covenant, agreement, term or provision of this Agreement, or of any agreement entered into concurrently herewith relating to the financing of the Equipment on its part to be kept or performed or to make provision satisfactory to the Vendor for such compliance; or

(c) a petition for reorganization under Section 77 of the Bankruptcy Act, as now constituted or as said Section 77 may be hereafter amended, shall be filed by or against the Railroad and, unless such petition shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Railroad under this Agreement shall not have been (and shall not continue to have been) duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees appointed (whether or not subject to ratification) in such proceedings in such manner that such obligations shall have the same status as obligations incurred by such trustee or trustees, within 30 days after such appointment, if any, or 60 days after such petition shall have been filed, whichever shall be earlier; or

(d) any other proceedings shall be commenced by or against the Railroad for any relief under any bankruptcy or insolvency law, or law relating to the relief of debtors, readjustments of indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which does not permit any readjustment of the indebtedness payable hereunder), and, unless such proceedings shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Railroad under this Agreement shall not have been (and shall not continue to have been) duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed (whether or not subject to ratification) for the Railroad or for its property in connection with any such proceedings in such manner that such obligations shall have the same status as obligations incurred by such trustee or trustees or receiver or receivers, within 30 days after such appointment, if any, or 60 days after such proceedings shall have been commenced, whichever shall be earlier; or

(e) the Railroad shall make or suffer any unauthorized assignment or transfer of this Agreement or any interest herein or any unauthorized transfer of the right to possession of any unit of the Equipment;

then at any time after the occurrence of such an event of default the Vendor may, upon written notice to the Railroad and upon compliance with any mandatory legal requirements then in force and applicable to such action by the Vendor, declare (hereinafter called a Declaration of Default) the entire indebtedness in respect of the Purchase Price of the Equipment, together with the interest thereon then accrued and unpaid, immediately due and payable, without further demand, and thereafter the aggregate of the unpaid balance of such indebtedness and interest shall bear interest from the date of such Declaration of Default at the rate per annum specified in Article 4 hereof as being applicable to amounts remaining unpaid after becoming due and payable, to the extent legally enforceable. The Vendor shall thereupon be entitled to recover judgment for the entire unpaid balance of the indebtedness in respect of the Purchase Price of the Equipment so payable, with interest as aforesaid, and to collect such judgment out of any property of

the Railroad wherever situated. The Railroad shall promptly notify the Vendor of any event which has come to its attention which constitutes, or which with the giving of notice and/or lapse of time could constitute, an event of default under this Agreement.

The Vendor may at its election waive any such event of default and its consequences and rescind and annul any Declaration of Default by notice to the Railroad in writing to that effect, and thereupon the respective rights of the parties shall be as they would have been if no such event of default had occurred and no Declaration of Default had been made. Notwithstanding the provisions of this paragraph, it is expressly understood and agreed by the Railroad that time is of the essence of this Agreement and that no such waiver, rescission or annulment shall extend to or affect any other or subsequent default or impair any rights or remedies consequent thereon.

ARTICLE 17. Remedies. At any time during the continuance of a Declaration of Default, the Vendor may, subject to compliance with any mandatory legal requirements then in force and applicable to the action to be taken by the Vendor, take or cause to be taken by its agent or agents immediate possession of the Equipment, or one or more of the units thereof, without liability to return to the Railroad any sums theretofore paid and free from all claims whatsoever, except as hereinafter in this Article 17 expressly provided, and may remove the same from possession and use of the Railroad or any other person and for such purpose may enter upon the Railroad's premises or any other premises where the Equipment may be located and may use and employ in connection with such removal any supplies, services and aids and any available trackage and other facilities or means of the Railroad.

In case the Vendor shall demand possession of the Equipment pursuant to this Agreement and shall reasonably designate a point or points upon the premises of the Railroad for the delivery of the Equipment to the Vendor, the Railroad shall, at its own expense, forthwith and in the usual manner (including, but not by way of limitation, giving prompt telegraphic and written notice to the Association of American Railroads and all railroads to which any part of the Equipment has been interchanged to return the Equipment so interchanged), cause (a) the Equipment to be moved to such point or points on its lines as shall

be designated by the Vendor and shall there deliver the Equipment or cause it to be delivered to the Vendor and (b) the Equipment to be moved to such interchange point or points of the Railroad as shall be designated by the Vendor upon any sale, lease or other disposal of all or any part of the Equipment by the Vendor. At the option of the Vendor, the Vendor may keep the Equipment on any of the lines or premises of the Railroad until the Vendor shall have leased, sold or otherwise disposed of the same, and for such purpose the Railroad agrees to furnish, without charge for rent or storage, the necessary facilities at any point or points selected by the Vendor reasonably convenient to the Railroad and, at the Railroad's risk, to permit inspection of the Equipment by the Vendor, the Vendor's representatives and prospective purchasers and users. This agreement to deliver the Equipment and furnish facilities as hereinbefore provided is of the essence of the agreement between the parties, and, upon application to any court of equity having jurisdiction in the premises, the Vendor shall be entitled to a decree against the Railroad requiring specific performance hereof. The Railroad hereby expressly waives any and all claims against the Vendor and its agent or agents for damages of whatever nature in connection with any retaking of any unit of the Equipment in any reasonable manner.

At any time during the continuance of a Declaration of Default, the Vendor (after retaking possession of the Equipment as hereinbefore in this Article 17 provided) may at its election and upon such notice as is hereinafter set forth retain the Equipment in satisfaction of the entire indebtedness in respect of the Purchase Price of the Equipment and make such disposition thereof as the Vendor shall deem fit. Written notice of the Vendor's election to retain the Equipment shall be given to the Railroad by telegram or registered mail, addressed as provided in Article 21 hereof, and to any other persons to whom the law may require notice, within 30 days after such Declaration of Default. In the event that the Vendor should elect to retain the Equipment and no objection is made thereto within the 30-day period described in the second proviso below, all the Railroad's rights in the Equipment shall thereupon terminate and all payments made by the Railroad may be retained by the Vendor as compensation for the use of the Equipment by the Railroad; <u>provided, however</u>, that if the Railroad, before the expiration of the 30-day period described in the proviso below,

should pay or cause to be paid to the Vendor the total unpaid balance of the indebtedness in respect of the Purchase Price of the Equipment, together with interest thereon accrued and unpaid and all other payments due under this Agreement as well as expenses of the Vendor in retaking possession of, removing and storing the Equipment and the Vendor's reasonable attorneys' fees, then in such event absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Railroad; provided, further, that if the Railroad or any other persons notified under the terms of this paragraph object in writing to the Vendor within 30 days from the receipt of notice of the Vendor's election to retain the Equipment, then the Vendor may not so retain the Equipment, but shall sell, lease or otherwise dispose of it or continue to hold it pending sale, lease or other disposition as hereinafter provided or as may otherwise be permitted by law. If the Vendor shall have given no notice to retain as hereinabove provided or notice of intention to dispose of the Equipment in any other manner, it shall be deemed to have elected to sell the Equipment in accordance with the provisions of this Article 17.

At any time during the continuance of a Declaration of Default, the Vendor, with or without retaking possession thereof, at its election and upon reasonable notice to the Railroad and to any other persons to whom the law may require notice of the time and place, may sell the Equipment, or any unit thereof, free from any and all claims of the Railroad or any other party claiming from, through or under the Railroad, at law or in equity, at public or private sale and with or without advertisement as the Vendor may determine; provided, however, that if, prior to such sale and prior to the making of a contract for such sale, the Railroad should tender full payment of the total unpaid balance of the indebtedness in respect of the Purchase Price of the Equipment, together with interest thereon accrued and unpaid and all other payments due under this Agreement as well as expenses of the Vendor in retaking possession of, removing, storing, holding and preparing the Equipment for, and otherwise arranging for, the sale and the Vendor's reasonable attorneys' fees, then in such event absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Railroad. The proceeds of such sale, less the attorneys' fees and any other expenses incurred by the Vendor in retaking possession of, removing, storing,

holding, preparing for sale and selling the Equipment, shall be credited on the amount due to the Vendor under the provisions of this Agreement.

Any sale hereunder may be held or conducted at such place or places and at such time or times as the Vendor may specify, in one lot and as an entirety or in separate lots and without the necessity of gathering at the place of sale the property to be sold, and in general in such manner as the Vendor may determine. The Vendor or the Railroad may bid for and become the purchaser of the Equipment, or any unit thereof, so offered for sale. The Railroad shall be given written notice of such sale not less than ten days prior thereto, by telegram or registered mail addressed to the Railroad as provided in Article 21 hereof. If such sale shall be a private sale (which shall be deemed to mean only a sale where an advertisement for bids has not been published in a newspaper of general circulation or a sale where less than 40 railroads have been solicited in writing to submit bids), it shall be subject to the right of the Railroad to purchase or provide a purchaser, within ten days after notice of the proposed sale price, at the same price offered by the intending purchaser or a better price. In the event that the Vendor shall be the purchaser of the Equipment, it shall not be accountable to the Railroad (except to the extent of surplus money received as hereinafter provided in this Article 17), and in payment of the purchase price therefor the Vendor shall be entitled to have credited on account thereof all or any part of the sums due to the Vendor from the Railroad hereunder. From and after the date of any such sale, the Railroad shall pay to the Vendor the per diem interchange for each unit of Equipment which shall not have been assembled, as hereinabove provided, by the date of such sale for each day from the date of such sale to the date of delivery to the Purchaser at such sale.

Each and every power and remedy hereby specifically given to the Vendor shall be in addition to every other power and remedy hereby specifically given or now or hereafter existing at law or in equity, and each and every power and remedy may be exercised from time to time and simultaneously and as often and in such order as may be deemed expedient by the Vendor. All such powers and remedies shall be cumulative, and the exercise of one shall not be deemed a waiver of the right to exercise any other or others. No delay or omission of the Vendor in the exercise of any such power or

remedy and no renewal or extension of any payments due hereunder shall impair any such power or remedy or shall be contrued to be a waiver of any default or an acquiescence therein. Any extension of time for payment hereunder or other indulgence duly granted to the Railroad shall not otherwise alter or affect the Vendor's rights or the Railroad's obligations hereunder. The Vendor's acceptance of any payment after it shall have become due hereunder shall not be deemed to alter or affect the Railroad's obligations or the Vendor's rights hereunder with respect to any subsequent payments or default therein.

If, after applying all sums of money realized by the Vendor under the remedies herein provided, there shall remain any amount due to it under the provisions of this Agreement, the Railroad shall pay the amount of such deficiency to the Vendor upon demand, together with interest from the date of such demand to the date of payment by the Railroad at the rate per annum set forth in Article 4 hereof applicable to amounts remaining unpaid after becoming due and payable. If the Railroad shall fail to pay such deficiency, the Vendor may bring suit therefor and shall be entitled to recover a judgment therefor against the Railroad. If, after applying as aforesaid all sums realized by the Vendor, there shall remain a surplus in the possession of the Vendor, such surplus shall be paid to the Railroad.

The Railroad will pay all reasonable expenses, including attorneys' fees, incurred by the Vendor in enforcing its remedies under the terms of this Agreement. In the event that the Vendor shall bring any suit to enforce any of its rights hereunder and shall be entitled to judgment, then in such suit the Vendor may recover reasonable expenses, including attorneys' fees, and the amount thereof shall be included in such judgment.

The foregoing provisions of this Article 17 are subject in all respects to all mandatory legal requirements at the time in force and applicable thereto.

Article 18. Applicable State Laws. Any provision of this Agreement prohibited by any applicable law of any jurisdiction (which is not overridden by applicable federal law) shall as to such jurisdiction be ineffective, without modifying the remaining provisions of this Agreement. Where, however, the conflicting provisions of any such applicable

law may be waived, they are hereby waived by the Railroad to the full extent permitted by law, it being the intention of the parties hereto that this Agreement shall be deemed to be a conditional sale and enforced as such.

Except as otherwise provided in this Agreement, the Railroad, to the full extent permitted by law, hereby waives all statutory or other legal requirements for any notice of any kind, notice of intention to take possession of or to sell or lease the Equipment, or any unit thereof, and any other requirements as to the time, place and terms of the sale or lease thereof, any other requirements with respect to the enforcement of the Vendor's rights under this Agreement and any and all rights of redemption.

ARTICLE 19. Recording. The Railroad will cause this Agreement, any assignments hereof and any amendments or supplements hereto or thereto to be filed and recorded with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act; and the Railroad will from time to time do and perform any other act and will execute, acknowledge, deliver, file, register, deposit and record any and all further instruments required by law or reasonably requested by the Vendor for the purpose of proper protection, to the satisfaction of counsel for the Vendor, of its title to the Equipment and its rights under this Agreement or for the purpose of carrying out the intention of this Agreement; and the Railroad will promptly furnish to the Vendor certificates or other evidence of such filing, registering, depositing and recording satisfactory to the Vendor.

ARTICLE 20. Payment of Expenses. The Railroad will pay all reasonable costs and expenses (other than the fees and expenses of counsel for any Builder) incident to this Agreement and the first assignment of this Agreement, and any instrument supplemental or related hereto or thereto, including all fees and expenses of counsel for the first assignee of this Agreement, and all reasonable costs and expenses in connection with the transfer by any party of interests acquired in such first assignment. If the first assignee is not an agent, such assignee may appoint a bank or trust company located in either the Borough of Manhattan, City and State of New York, or Chicago, Illinois, having capital and surplus aggregating at least $40,000,000 to act as agent on its behalf to hold all the right, title and interests of the Builders under this Agreement assigned

to it, all upon and subject to the terms and conditions provided for in a written agreement to be entered into by the first assignee and such agent in form and substance satisfactory to the first assignee and such agent; and the Railroad hereby agrees to pay all reasonable costs and expenses of such Agent. Prior to appointing such an agent, the assignee shall consult with the Railroad and shall give reasonable consideration to the recommendations of the Railroad as to the bank or trust company to be appointed.

ARTICLE 21. Notice. Any notice hereunder to any of the parties designated below shall be deemed to be properly served if delivered or mailed to it at its chief place of business at the following specified addresses:

(a) to the Railroad, at 80 East Jackson Street, Chicago, Illinois 60604, attention of R. W. Harper, Vice President-Finance.

(b) to a Builder, at its address specified in Item 1 of Schedule A hereto, and

(c) to any assignee of the Vendor or of the Railroad, at such address as may have been furnished in writing to each of the other parties hereto by such assignee,

or at such other address as may have been furnished in writing by such party to the other parties to this Agreement.

ARTICLE 22. Article Heading; Effect and Modification of Agreement. All article headings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

This Agreement, including the Schedules hereto, exclusively states the rights of the Vendor and the Railroad with respect to the Equipment and supersedes all other agreements, oral or written, with respect to the Equipment. No variation or modification of this Agreement and no waiver of any of its provisions or conditions shall be valid unless in writing and signed by duly authorized officers of the Vendor and the Railroad.

ARTICLE 23. Law Governing. The Railroad warrants that its chief place of business and its chief executive offices are located in the State of Illinois. The terms

of this Agreement and all rights and obligations hereunder shall be governed by the laws of the State of Illinois; provided, however, that the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act and such additional rights arising out of the filing, recording or deposit hereof, if any, and of any assignment hereof as shall be conferred by the laws of the several jurisdictions in which this Agreement or any assignment hereof shall be filed, recorded or deposited.

ARTICLE 24. Execution. This Agreement may be executed in any number of counterparts, and such counterparts together shall constitute but one and the same contract. It shall not be necessary that any counterpart be signed by all the parties so long as any counterpart be signed by the Railroad and one or more Builders. If this Agreement is assigned by any Builder, the original counterpart of this Agreement shall be deemed to be the counterpart executed by such Builder and delivered to such assignee. Each Builder shall be bound hereunder, notwithstanding the failure of any other Builder to execute and deliver this Agreement, or perform its obligations hereunder. Although this Agreement is dated, for convenience, as of the date first set forth above, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

IN WITNESS WHEREOF, the parties hereto, each pursuant to due corporate authority, have caused this instrument to be executed in their respective corporate names by their officers, thereunto duly authorized, and their respective corporate seals to be hereunto affixed, duly attested, all as of the date first above written.

GENERAL MOTORS CORPORATION
(Electro-Motive Division),

by

_____
Vice President

[Corporate Seal]

Attest:

_____
Assistant Secretary

FMC CORPORATION,

by

_____
Vice President

[Corporate Seal]

Attest:

_____
Assistant Secretary

PULLMAN INCORPORATED
(Pullman-Standard division),

by

_____
Vice President

[Corporate Seal]

Attest:

_____
Assistant Secretary

GENERAL ELECTRIC COMPANY,

by

_____
Manager-Marketing,
Locomotive Products Department

[Corporate Seal]

Attest:

_____
Attesting Secretary

PACCAR INC,

by

_____
Vice President

[Corporate Seal]

Attest:

_____
~~Assistant~~ Secretary

ACF INDUSTRIES, INCORPORATED,

by

_____
Vice President

[Corporate Seal]

Attest:

_____
Assistant Secretary

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY,

by

_____
Vice President-Finance

[Corporate Seal]

Attest:

_____
Assistant Secretary

STATE OF ILLINOIS,)
) ss.:
COUNTY OF COOK,)

On this day of 1975, before me personally appeared , to me personally known, who, being by me duly sworn, says that he is a Vice President of GENERAL MOTORS CORPORATION (Electro-Motive Division), that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

_____
Notary Public

[Notarial Seal]

My Commission Expires

STATE OF ILLINOIS,)
) ss.:
COUNTY OF COOK,)

On this day of 1975, before me personally appeared , to me personally known, who, being by me duly sworn, says that he is a Vice President of FMC CORPORATION, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

_____
Notary Public

[Notarial Seal]

My Commission Expires

STATE OF ILLINOIS,)
) ss.:
COUNTY OF COOK,)

On this day of 1975, before me personally appeared , to me personally known, who, being by me duly sworn, says that he is a Vice President of PULLMAN INCORPORATED (Pullman-Standard division), that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

_____
Notary Public

[Notarial Seal]

My Commission Expires

COMMONWEALTH OF PENNSYLVANIA,)
) ss.:
COUNTY OF ERIE,)

On this day of 1975, before me personally appeared , to me personally known, who, being by me duly sworn, says that he is Manager-Marketing, Locomotive Products Department, of GENERAL ELECTRIC COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

_____
Notary Public

[Notarial Seal]

My Commission Expires

STATE OF WASHINGTON,)
) ss.:
COUNTY OF KING,)

On this 3rd day of February 1975, before me personally appeared J. J. Jolley, to me personally known, who, being by me duly sworn, says that he is a Vice President of PACCAR INC, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Virginia K. Tyson
Notary Public

[Notarial Seal]

My Commission Expires 1/24/77

STATE OF NEW YORK,)
) ss.:
COUNTY OF NEW YORK,)

On this day of 1975, before me personally appeared , to me personally known, who, being by me duly sworn, says that he is a Vice President of ACF INDUSTRIES, INCORPORATED, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Notary Public

[Notarial Seal]

My Commission Expires

STATE OF ILLINOIS,)
) ss.:
COUNTY OF COOK,)

On this 31st day of January 1975, before me personally appeared R. W. HARPER, to me personally known, who, being by me duly sworn, says that he is a Vice President of THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

E. R. Arquin
Notary Public

[Notarial Seal]

My Commission Expires
FEBRUARY 1, 1977

SCHEDULE A

Item 1: (a) General Motors Corporation (Electro-Motive Division), a Delaware corporation, La Grange, Illinois 60525.

(b) FMC Corporation, a Delaware corporation, 4700 Northwest Front Avenue, Portland, Oregon 97210.

(c) Pullman Incorporated (Pullman Standard division), a Delaware corporation, 200 South Michigan Avenue, Chicago, Illinois 60604.

(d) General Electric Company, a New York corporation, 2901 East Lake Road, Erie, Pennsylvania 16501.

(e) PACCAR Inc, a Delaware corporation, 1400 North 4th Street, Renton, Washington 98055.

(f) ACF Industries, Incorporated, a New Jersey corporation, 750 Third Avenue, New York, New York 10017.

Item 2: (a) (General Motors Corporation (Electro-Motive Division)): The Builder warrants that the Equipment will be built in accordance with the Specifications and the standards and requirements set forth in Article 2 of the Conditional Sale Agreement to which this Schedule is attached (hereinafter called the Agreement) and warrants that the Equipment will be free from defects in material (except as to specialties incorporated therein which were specified by the Railroad and not manufactured by the Builder) and workmanship under normal use and service; the Builder's obligations under this paragraph being limited to making good at its plant any part or parts of any unit of the Equipment which, within two years after the delivery of such unit to the Railroad or before such unit has been in scheduled service 250,000 miles (whichever event shall first occur), shall be returned to the Builder with transportation charges

prepaid and which the Builder's examination shall disclose to its satisfaction to have been thus defective.

This warranty of the Builder shall not apply (i) to any locomotive components which shall have been repaired or altered unless repaired or altered by the Builder or its authorized service representatives, if, in its judgment, such repairs or alterations affect the stability of a unit of the Equipment or (ii) to any unit of the Equipment which has been subject to misuse, negligence or accident.

This warranty is expressly in lieu of all other warranties expressed or implied, including any implied warranty of merchantability or fitness for a particular purpose, and of all other obligations or liabilities on the part of the Builder, except for its obligations under Articles 2, 3, 4 and 14 of the Agreement. The Builder neither assumes nor authorizes any person to assume for it any other liability in connection with the construction and delivery of the Equipment, except as aforesaid.

The Builder further agrees with the Railroad that neither the inspection as provided in Article 3 of the Agreement, nor any examination, nor the acceptance of any units of the Equipment as provided in Article 3 of the Agreement shall be deemed a waiver or a modification by the Railroad of any of its rights hereunder.

The Builder further agrees to hold harmless the Railroad from claims, costs and liability to the Builder's employees arising out of and in the course of their employment and while on the Railroad's premises or equipment except when traveling as revenue passengers on the Railroad's trains, and except that the Builder shall not be liable for the Railroad's sole negligence.

The Builder reserves the right to make change

in the design of, or add any improvements to, units of the Equipment at any time without incurring any obligation to make similar changes or additions in respect of units of Equipment previously delivered to the Railroad.

(b) (FMC Corporation): The Builder warrants that the Equipment will be built in accordance with the Specifications and the standards and conditions set forth in Article 2 of the Conditional Sale Agreement to which this Schedule is attached (hereinafter called the Agreement), and, except in cases of articles and materials specified by the Railroad and not manufactured by the Builder, warrants the Equipment to be free from defects in material and workmanship under normal use and service, the liability of the Builder under this warranty being limited, as the Railroad may elect: (i) to repair of the defect at the Builder's plant at Portland, Oregon; or (ii) to replacement of the defective part; or (iii) to the cost of repair or replacement according to the AAR Code of Rules Governing Condition of and Repairs to Freight and Passenger Cars with Interchange of Traffic.

The foregoing warranty of the Builder shall begin at the time of delivery of a unit of Equipment to the Railroad and terminate one year after such delivery. <u>This warranty is expressly in lieu of all other warranties expressed or implied on the part of the Builder</u>, except for the patent indemnification included in Article 14 of of the Agreement and except as hereinafter provided in this Schedule A, and the Builder neither assumes nor authorizes any person to assume for it any other warranty liability in connection with the construction and delivery of the Equipment.

The Builder further agrees that the Railroad shall have the right to repair the Equipment furnished by the Builder of its manufacture and that repair parts for such equipment may be made by, or for, the Railroad or purchased

in the open market, as the Railroad may determine; and it is agreed the Equipment may be repaired by other railroads no matter where the repair parts are obtained. This agreement includes the right on the part of the Railroad to purchase repair parts for such Equipment in anticipation of breakage, instead of waiting until the breakage actually occurs before ordering the repair parts.

The Builder's patent indemnification set forth in Article 14 of the Agreement does not apply to designs, systems, processes and formulae utilized by the Builder in or about the construction of the Equipment, or any unit thereof, as the result of specification by the Railroad, other than for patents or other rights controlled by the Builder; and the Railroad shall indemnify and save harmless the Builder and/or manufacturer and the Vendor for the use of any designs, systems, processes and formulae utilized by the Builder in or about the construction of the Equipment, or any unit thereof, as the result of specification by the Railroad, as against any patent infringement claims or damages as specified in said Article 14, other than for patents or other rights controlled by the Builder.

The Builder will hold harmless the Railroad from claims, costs and liability to Builder's employees arising out of and in the course of their employment and while on the Railroad's premises or equipment except when traveling as revenue passengers on the Railroad's trains.

(c) (Pullman Incorporated (Pullman-Standard division)): The Builder warrants that the Equipment will be built in accordance with the Specifications and the standards and requirements set forth in Article 2 of the Conditional Sale Agreement to which this Schedule is attached (hereinafter called the Agreement) and warrants the Equipment will be free from defects in material (except as to specialties incorporated therein specified by the Railroad

and not manufactured by the Builder) and workmanship and design under normal use and service, the Builder's obligation under this Item 2 being limited to making good at its plant any part or parts of any unit of Equipment which shall, within one year after the delivery of such unit of Equipment to the Railroad, be returned to the Builder with transportation charges prepaid and which examination by the Builder shall disclose to its satisfaction to have been thus defective.

The foregoing warranty is expressly in lieu of all other warranties, expressed or implied, including any implied merchantability or fitness for a particular purpose, and of all other obligations or liabilities on the part of the Builder, except for its obligations under Articles 2, 3, 4 and 14 of the Agreement, and the Builder neither assumes nor authorizes any person to assume for it any other liability in connection with the construction of the Equipment and delivery of the Equipment, except as aforesaid. It is further understood and agreed that in no event shall the Builder be liable for indirect or consequential damages of any kind.

The Builder further agrees with the Railroad that neither the inspection provided in Article 3 of the Agreement, nor any examination, nor the acceptance of any units of the Equipment as provided in said Article 3 shall be deemed a waiver or a modification by the Railroad of any of its rights under this Item 2.

(d) (General Electric Company): The Builder warrants that the Equipment will be built in accordance with the Specifications and the standards and requirements referred to in Article 2 of the Conditional Sale Agreement to which this Schedule is attached (hereinafter called the Agreement) and warrants the equipment will be free from defects in material (except as to specialties incorporated therein that are not of the Builder's own specification or design) and workmanship under normal use

and service; the Builder's obligations under this paragraph being limited to making good at its plant any part or parts of any unit of the Equipment which, within one year after the delivery of such unit to the Railroad, shall be returned to the Builder with transportation charges prepaid and which the Builder's examination shall disclose to its satisfaction to have been thus defective.

This warranty of the Builder shall not apply (i) to any locomotive components which shall have been repaired or altered, unless repaired or altered by the Builder or its authorized service representatives, if, in its judgment, such repairs or alterations affect the stability of a unit of the Equipment or (ii) to any unit of the Equipment which has been subject to misuse, negligence or accident.

THIS WARRANTY IS EXPRESSLY IN LIEU OF ALL OTHER WARRANTIES EXPRESSED OR IMPLIED, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND OF ALL OTHER OBLIGATIONS OR LIABILITIES ON THE PART OF THE BUILDER, EXCEPT FOR ITS OBLIGATIONS UNDER THE AGREEMENT. THE BUILDER NEITHER ASSUMES NOR AUTHORIZES ANY PERSON TO ASSUME FOR IT ANY OTHER LIABILITY IN CONNECTION WITH THE CONSTRUCTION AND DELIVERY OF THE EQUIPMENT, EXCEPT AS AFORESAID.

In no event shall the Builder be liable for special or consequential damages. The Builder's liability on any claim of any kind including negligence, or for any loss or damage arising out of, connected with, or resulting from, the Agreement, or from the performance or breach thereof, or from the manufacture, sale, delivery, resale, repair or use of any unit of the Equipment covered by, or furnished under, the Agreement, shall in no case exceed the Purchase Price of such unit of the Equipment involved in the claim, and upon the expiration of the warranty period specified above all such liability shall terminate. The Builder shall have no liability

for any unit of the Equipment or part thereof which becomes defective by reason of improper storage or application, misuse, negligence, accident or improper operation, maintenance, repairs or alterations on the part of the Railroad or any third party other than the Builder. The foregoing warranty shall constitute the sole remedy of the Railroad and the sole liability of the Builder.

It is understood that the Builder has the right to make changes in the design of, or to add improvements to units of the Equipment at any time without incurring any obligations to install, at the Builder's expense, the same or other locomotives sold by Builder.

The Builder further agrees with the Railroad that neither the inspection as provided in the Agreement, nor any examination, nor the acceptance of any units of the Equipment as provided in the Agreement shall be deemed a waiver or a modification by the Railroad of any of its rights under this Item 2.

(e) (PACCAR Inc): The Builder warrants that the Equipment will be built in accordance with the requirements, specifications and standards set forth in Article 2 of the Conditional Sale Agreement to which this Schedule is attached (hereinafter called the Agreement) and, except in cases of articles and materials specified by the Railroad and not manufactured by the Builder, warrants the Equipment to be free from defects in material and workmanship under normal use and service, the liability of the Builder under this warranty being limited, as the Railroad may elect: (i) to repair of the defects at the Builder's plant; or (ii) to replacement of a defective part; or (iii) to the cost of repair or replacement according to the AAR Code of Rules Governinig Condition of and Repairs to Freight and Passenger Cars with Interchange of Traffic. The Builder shall be given reasonable opportunity to verify any claim of defects in workmanship or materials.

The foregoing warranty of the Builder shall begin at the time of delivery of a unit of the Equipment to the Railroad and terminate two years after such delivery. THE BUILDER MAKES NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. The Railroad's right under the foregoing warranty shall be its sole and exclusive remedy and the Builder will have no liability for lost profit or for indirect, incidental, consequential or commercial losses. This warranty is expressly in lieu of all other warranties express or implied on the part of the Builder, except for the patent indemnification included in Article 14 of this Agreement. The Builder neither assumes nor authorizes any person to assume for it any other warranty liability in connection with the construction and delivery of the Equipment.

The Builder further agrees with the Railroad that neither the inspection as provided in Article 3 of the Agreement nor any examination nor the acceptance of any units of the Equipment as provided in said Article 3 shall be deemed a waiver or a modification by the Railroad of any of its rights under this Item 2.

The Builder will hold harmless the Railroad from claims, costs and liability to the Builder's employees arising out of and in the course of their employment and while on the Railroad's premises or equipment except when traveling as revenue passengers on the Railroad's trains.

(f) (ACF Industries, Incorporated): The Builder warrants that the Equipment will be built in accordance with the requirements, specifications and standards set forth in Article 2 of the Conditional Sale Agreement to which this Schedule is attached (hereinafter called this Agreement) and warrants the Equipment will be free from defects in material (except as to specialties incorporated therein which were specified or supplied by the Railroad and not manufactured by the Builder) and

workmanship under normal use and service, the Builder's obligation under this Item 2 being limited to making good at its factory any part or parts of any unit of the Equipment which shall be returned to the Builder with transportation charges prepaid, within one year after the delivery of such unit to the Railroad, and which the Builder's examination shall disclose to its satisfaction to have been thus defective. The foregoing warranty of the Builder is expressly in lieu of all other warranties, express or implied, including any implied warranty of merchantability or fitness for a particular purpose, and of all other obligations or liabilities under Articles 2, 3, 4 and 14 of the Agreement, and the Builder neither assumes nor authorizes any person to assume for it any other liability in connection with the construction and delivery of the Equipment except as aforesaid.

The Builder further agrees that neither the inspection as provided in Article 3 of this Agreement nor any examination nor the acceptance of any units of the Equipment as provided in said Article 3 shall be deemed a waiver or a modification by the Owner-Trustee of any of its rights under this Item 2.

SCHEDULE B

Builder	Type	Quantity	Builder's Specifications	Builder's Plant	Railroad's Numbers (inclusive)	Unit Base Price	Total Base Price	Time and Place of Delivery
(a) General Motors Corporation (Electro-Motive Divison)	2300 h.p. GP-39-2 locomotive	29	8075	McCook, Illinois	3626-7 3654-5	$355,200	$10,300,800	Prior to April 30, 1975, at Builder's Plant
(b) FMC Corporation	60' 9" 100-ton box car with roller bearings AAR Mechanical Designation XM	400	Job 17620	Portland, Oregon	611000-611399	36,000	14,400,000	March-April, 1975, at Builder's Plant
(c) Pullman Incorporated (Pullman-Standard division)	60' 9" 100-ton box car with roller bearings; AAR Mechanical Designation XL	216	Lot Number 9783	Bessemer, Alabama	611400-611615	33,100	7,149,600	April-May, 1975, at Bessemer, Ala.

SCHEDULE B (Cont'd)

Builder	Type	Quantity	Builder's Specifications	Builder's Plant	Railroad's Numbers (inclusive)	Unit Base Price	Total Base Price	Time and Place of Delivery
(d) General Electric Company	U-36-C, 3600 h.p. locomotive; AAR Mechanical Designation C-C	6	3690E	Erie, Pennsylvania	8794-8799	$436,300	$ 2,617,800	Prior to March 1, 1975, at Erie, Pa.
(e) PACCAR Inc	52' 6", 70-ton insulated box car with roller bearing trucks, cushioned underframe, dual Air Pak load dividers, 16' doors;	100	PC-339, as revised	Renton, Washington	522800-522899	37,100	3,710,000	Prior to March 1, 1975, at Builder's Plant
(f) ACF Industries, Incorporated	4600 cu. ft., 100-ton covered hopper car with roller bearing trucks and interior coating	400	11-01312, dated November 11, 1974	Huntington, West Virginia	314800-315199	30,000	12,000,000	February-March, 1975, at Russell, Ky.

RECORDATION NO. 7822 Filed & Recorded
FEB 6 1975 -10 55 AM
INTERSTATE COMMERCE COMMISSION

CONDITIONAL SALE AGREEMENT

Dated as of January 15, 1975

Among

GENERAL MOTORS CORPORATION
(Electro-Motive Division),
FMC CORPORATION,
PULLMAN INCORPORATED (Pullman Standard division)
GENERAL ELECTRIC COMPANY,
PACCAR INC,
ACF INDUSTRIES, INCORPORATED

and

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY

CONDITIONAL SALE AGREEMENT dated as of January 15, 1975, among each of the corporations named in Item 1 of Schedule A hereto and THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, a Delaware corporation (hereinafter called the Railroad).

WHEREAS each of the corporations named in Item 1 of Schedule A hereto severally have agreed to construct, sell and deliver to the Railroad, and the Railroad has agreed to purchase, the equipment described in Schedule B hereto (hereinafter called the Equipment);

NOW, THEREFORE, in consideration of the mutual promises, covenants and agreements hereinafter set forth, the parties hereto do hereby agree as follows:

ARTICLE 1. Certain Definitions; Obligations of Builders Several; Additional Agreements. The term "Vendor", whenever used in this Agreement, means, before any assignment of any of their rights hereunder, the respective corporations named in Item 1 of Schedule A hereto and any successor or successors for the time being to their respective manufacturing properties and businesses, and, after any such assignment, both any assignee or assignees for the time being of such particular assigned rights as regards such rights, and also any assignor as regards any rights hereunder that are retained or excluded from any assignment. Whenever the term "Vendor" refers to a corporation named in Item 1 of Schedule A hereto, such term shall mean any or all such corporations, as the context may require. The term "Builder", whenever used in this Agreement, means, both before and after any such assignment, each of the respective corporations (as to the units of Equipment to be constructed by such corporation and sold hereunder) named in Item 1 of Schedule A hereto and any successor or successors for the time being to their respective manufacturing properties and businesses.

The rights and obligations of the Builders under this Agreement are several in accordance with their interests and not joint. Accordingly, whenever this Agreement, by the use of such designation as "the Vendor", "such Builder" or other similar term, confers a right or imposes an obligation upon any corporation named in Item 1 of Schedule A hereto or its successor, such right or obligation shall be

construed to accrue to or to be enforceable against only the specific corporation furnishing the units of Equipment giving rise to such right or obligation and its successors as herein provided.

Additional Agreements, if any, set forth in Schedule A hereto shall be deemed to be a part of this Agreement as fully as though set forth in full in this instrument.

ARTICLE 2. Construction and Sale. Pursuant to this Agreement, each Builder shall construct the units of the Equipment to be constructed by it as described in Schedule B hereto (such Equipment with respect to each Builder being hereinafter sometimes called its Equipment) and will sell and deliver to the Railroad, and the Railroad will purchase from such Builder and accept delivery of and pay for (as hereinafter provided), such Equipment, each unit of which shall be constructed in accordance with the specifications set forth therefor in Schedule B hereto and in accordance with such modifications thereof as may be agreed upon in writing between such Builder and the Railroad (which specifications and modifications, if any, are hereinafter called the Specifications). The design, quality and component parts of each unit of the Equipment shall conform, on the date of completion of manufacture of each thereof, to all Department of Transportation and Interstate Commerce Commission requirements and specifications and to all standards recommended by the Association of American Railroads reasonably interpreted as being applicable to equipment of the character of such units of the Equipment and each unit of the Equipment (except to the extent, if any, referred to in Schedule A hereto and/or in Article 8 hereof) will be new railroad equipment.

ARTICLE 3. Inspection and Delivery. Each Builder will deliver the units of its Equipment to the Railroad at the place or places specified in Schedule B hereto (or if Schedule B does not specify a place or places, at the place or places designated from time to time by the Railroad), freight charges, if any, prepaid, in accordance with the delivery schedule set forth in Schedule B hereto; provided, however, that no Builder shall have any obligation to deliver any unit of its Equipment hereunder at any time after the commencement of any proceedings specified in clause (c) or (d) of Article 16 hereof or if any event of default (as described in Article 16 hereof), or event which with lapse of time and/or demand would constitute such an event of default, shall have occurred.

Each Builder's obligation as to time of delivery is subject, however, to delays resulting from causes beyond the Builder's reasonable control, including but not limited to acts of God, acts of government such as embargoes, priorities and allocations, war or war conditions, riot or civil commotion, sabotage, strikes, differences with workmen, accidents, fire, flood, explosion, damage to plant, equipment or facilities, delays in receiving necessary materials or delays of carriers or subcontractors.

Notwithstanding the preceding provisions of this Article 3, any Equipment not delivered, accepted and settled for pursuant to Article 4 hereof on or before August 31, 1975, shall be excluded herefrom. If any unit or units of Equipment shall be excluded from this Agreement pursuant to the immediately preceding sentence, the Builder or Builders of such unit or units and the Railroad shall execute an agreement supplemental hereto limiting this Agreement to the units of Equipment not so excluded herefrom. If a Builder's failure to deliver Equipment so excluded from this Agreement resulted from one or more of the causes set forth in the immediately preceding paragraph, the Railroad shall nevertheless be obligated to accept such Equipment and pay the full purchase price therefor, determined as provided in this Agreement, if and when such Equipment shall be completed and delivered by such Builder, such payment to be in cash on the delivery of such Equipment, either directly or, in case the Railroad shall arrange therefor, by means of a conditional sale agreement, equipment trust or such other appropriate method of financing as the Railroad shall determine and as shall be reasonably acceptable to such Builder.

During construction, the Equipment shall be subject to inspection and approval by the authorized inspectors of the Railroad and each Builder shall grant to such authorized inspectors reasonable access to its plant. Each Builder agrees to inspect all materials used in the construction of the Equipment in accordance with the standard quality control practices of such Builder. Upon completion of each unit or of a number of units of the Equipment, such unit or units shall be presented to an inspector of the Railroad for inspection at the place specified for delivery of such unit or units, and if each such unit conforms to the Specifications, requirements and standards applicable thereto, such inspector or an authorized representative of the Railroad shall execute and deliver to such Builder a certificate of acceptance (hereinafter called the Certificate of Accep-

tance) stating that such unit or units have been inspected and accepted on behalf of the Railroad and are marked in accordance with Article 7 hereof; provided, however, that such Builder shall not thereby be relieved of its warranty referred to in Article 14 hereof.

On delivery of each such unit hereunder at the place specified for delivery, the Railroad will assume the responsibility and risk of, and shall not be released from its obligations hereunder in the event of, any damage to or the destruction or loss of such unit; provided, however, that such delivery shall not thereby relieve a Builder of its warranty referred to in Article 14 hereof.

ARTICLE 4. Purchase Price and Payment. The base price or prices per unit of the Equipment are set forth in Schedule B hereto. Such base price or prices are subject to such increase or decrease as may be agreed to by the Builder thereof and the Railroad. The term "Purchase Price" as used herein shall mean the base price or prices as so increased or decreased. If the aggregate Purchase Price of Equipment for which settlement has been made under this Agreement is in an amount not less than $50,250,000, the Railroad may, at its option, exclude from this Agreement any unit or units of Equipment for which settlement has not been made and the appropriate Builder or Builders of such unit or units (and any assignee of such Builder or Builders) shall, upon request of the Railroad enter into an agreement supplemental hereto evidencing such exclusion. The Railroad agrees to purchase any such unit or units so excluded from this Agreement and to pay the Builder in cash on the date such unit or units would otherwise have been settled for under this Agreement either directly, or, if the Builder and the Railroad shall mutually agree, by means of a conditional sale, equipment trust or other appropriate method of financing.

For the purpose of making settlement, the Equipment shall be divided into such number of groups (not more than three) of units of the Equipment, delivered to and accepted by the Railroad (each such group being hereinafter called a Group), as the respective Builder, the Railroad and the Vendor may agree to.

The Railroad hereby acknowledges itself to be indebted to the Vendor in the amount of, and hereby promises to pay in cash to the Vendor at such place as the Vendor

may designate, the Purchase Price of the Equipment, as follows:

(a) on each Closing Date (as hereinafter defined) the amount, if any, by which (x) the aggregate Purchase Price of all units of the Equipment for which settlement has theretofore and is then being made, as stated in the invoice or invoices presented in respect of such Closing Date (said invoiced prices being hereinafter called the Invoiced Purchase Prices), exceeds (y) the sum of $50,000,000 and any amount or amounts previously paid or payable with respect to the Invoiced Purchase Prices pursuant to this subparagraph (a); and

(b) in 15 consecutive equal (to the nearest multiple of $1,000, except for appropriate adjustment of the final instalment in case the amount payable pursuant to this subparagraph (b) shall not, when divided by 15, result in an amount ending in a multiple of $1,000) annual instalments, as hereinafter provided, an amount equal to the aggregate of the Invoiced Purchase Prices for all the Equipment less the amount paid or payable with respect thereto pursuant to subparagraph (a) of this paragraph (the aggregate of said instalments being hereinafter called the Conditional Sale Indebtedness).

In the event that on any Closing Date the final Purchase Price of any Group has not been finally determined, the invoice presented may be a preliminary invoice, subject to upward adjustment upon determination of the final Purchase Price, and a supplemental invoice may be presented by the Builder at least ten days prior to any subsequent Closing Date for settlement on such subsequent Closing Date for any increase in the Purchase Price; it being understood and agreed by the Builders that any preliminary invoice or invoices presented by the Builders in respect of any Group shall be in amount not in excess of the final Purchase Price of such Group.

The instalments of the Conditional Sale Indebtedness payable pursuant to subparagraph (b) of the third paragraph of this Article 4 shall be payable annually on May 15 in each year commencing on May 15, 1976, to and including May 15, 1990. The unpaid portion of the Conditional Sale Indebtedness shall bear interest from the respective Closing Dates on which such indebtedness was incurred at the rate of 9-3/4% per annum. Such interest shall be payable, to the extent accrued, on May 15 and November 15 in each year, commencing May 15, 1975.

The term "Closing Date" with respect to any Group of the Equipment shall mean March 3, 1975, and such other dates (after March 3, 1975, and prior to August 31, 1975,) not more than 10 business days following presentation by a Builder to the Railroad of the invoice and the Certificate or Certificates of Acceptance for such Group, as shall be fixed by the Railroad by written notice delivered to the Vendor at least six business days prior to the Closing Date designated therein; it being understood and agreed, however, that the aggregate Purchase Price of all Equipment settled for on Closing Dates prior to April 1, 1975, shall not exceed $26,000,000. The term "business days" as used herein means calendar days, excluding Saturdays, Sundays and any other day on which banking institutions in Chicago, Illinois, or New York, New York, are authorized to remain closed.

All interest under this Agreement shall be calculated on the basis of a 360-day year of twelve 30-day months.

The Railroad will pay, to the extent legally enforceable, interest at the rate of 10-3/4% per annum upon all amounts remaining unpaid after the same shall have become due and payable pursuant to the terms hereof, anything herein to the contrary notwithstanding.

All payments provided for in this Agreement shall be made in such coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts. Except as provided in Article 8 hereof, the Railroad shall not have the privilege of prepaying any instalment of its indebtedness hereunder prior to the date it becomes due.

In the event the Vendor, pursuant to Article 15 hereof, assigns the right to receive the payments herein provided to be made by the Railroad, the assignee thereof may request the Railroad to make and the Railroad shall make such payments to it at such address as shall be supplied to the Railroad by the assignee.

ARTICLE 5. Taxes. All payments to be made by the Railroad hereunder will be free of expense to the Vendor for collection or other charges and will be free of expense to the Vendor with respect to the amount of any local, state, federal or foreign taxes (other than net income, gross receipts [except gross receipts taxes in the nature of or in lieu of sales or use taxes], excess profits and similar taxes) or license fees, assessments, charges, fines or penal-

ties hereafter levied or imposed upon or in connection with or measured by, this Agreement or any sale, use, payment, shipment, delivery or transfer of title under the terms hereof (all such expenses, taxes, license fees, assessments, charges, fines and penalties being hereinafter called impositions), all of which impositions the Railroad assumes and agrees to pay on demand. The Railroad will also pay promptly all impositions which may be imposed upon the Equipment delivered to it or for the use or operation thereof or upon the earnings arising therefrom or upon the Vendor solely by reason of its ownership thereof and will keep at all times all and every part of the Equipment free and clear of all impositions which might in any way affect the title of the Vendor or result in a lien upon any part of the Equipment; provided, however, that the Railroad shall be under no obligation to pay any impositions of any kind so long as it is contesting in good faith and by appropriate legal proceedings such impositions and the nonpayment thereof does not, in the opinion of the Vendor, adversely affect the property or rights of the Vendor in or to the Equipment or otherwise under this Agreement. If any such impositions shall have been charged or levied against the Vendor directly and paid by the Vendor, the Railroad shall reimburse the Vendor upon presentation of an invoice therefor, and any amounts so paid by the Vendor shall be secured by and under this Agreement; provided, however, that the Railroad shall not be obligated to reimburse the Vendor for any impositions so paid unless the Vendor shall have been legally liable with respect thereto (as evidenced by an opinion of counsel for the Vendor) or unless the Railroad shall have approved the payment thereof.

ARTICLE 6. Title to the Equipment. The Vendor shall and hereby does retain the full legal title to and property in the Equipment until the Railroad shall have made all its payments under this Agreement and shall have kept and performed all its agreements herein contained, notwithstanding the delivery of the Equipment to and the possession and use thereof by the Railroad as provided in this Agreement. Any and all additions to the Equipment and any and all replacements of the Equipment and of parts thereof and additions thereto shall constitute accessions to the Equipment and shall be subject to all the terms and conditions of this Agreement and included in the term "Equipment" as used in this Agreement.

Except as otherwise specifically provided in Article 8 hereof, when and only when the full indebtedness in

respect of the Purchase Price of the Equipment, together with interest and all other payments as herein provided, shall have been paid, and all the Railroad's obligations herein contained shall have been performed by the Railroad, absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Railroad without further transfer or action on the part of the Vendor. However, the Vendor, if so requested by the Railroad at that time, will (a) execute a bill or bills of sale for the Equipment transferring its title thereto and property therein to the Railroad, or upon its order, free of all liens, security interests and other encumbrances created or retained hereby and deliver such bill or bills of sale to the Railroad at its address referred to in Article 21 hereof, (b) execute and deliver at the same place, for filing, recording or depositing in all necessary public offices, such instrument or instruments in writing as may be necessary or appropriate in order then to make clear upon the public records the title of the Railroad to the to the Equipment and (c) pay to the Railroad any money paid to the Vendor pursuant to Article 8 hereof and not theretofore applied as therein provided. The Railroad hereby waives and releases any and all rights, existing or that may be acquired, in or to the payment of any penalty, forfeit or damages for failure to execute and deliver such bill or bills of sale or instrument or instruments or to file any certificate of payment in compliance with any law or statute requiring the filing of the same, except for failure to execute and deliver such bill or bills of sale or instrument or instruments or to file such certificate within a reasonable time after written demand by the Railroad.

ARTICLE 7. Marking of the Equipment. The Railroad will cause each unit of the Equipment to be kept numbered with its identifying number as set forth in Schedule B hereto, or in the case of Equipment not there listed such identifying number as shall be set forth in any amendment or supplement hereto extending this Agreement to cover such Equipment, and will keep and maintain, plainly, distinctly, permanently and conspicuously marked on each side of each unit, in letters not less than one inch in height, the words "Ownership subject to a Security Interest Filed under the Interstate Commerce Act, Section 20c" or other appropriate markings approved by the Vendor, with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the Vendor's title to and property in the Equipment and its rights under this Agreement. The

Railroad will not place any such unit in operation or exercise any control or dominion over the same until such markings have been made thereon and will replace promptly any such markings which may be removed, defaced or destroyed. The Railroad will not change the number of any unit of the Equipment except in accordance with a statement of new number or numbers to be substituted therefor, which statement previously shall have been filed with the Vendor by the Railroad and filed, recorded and deposited by the Railroad in all public offices where this Agreement shall have been filed, recorded and deposited.

Except as provided in the immediately preceding paragraph, the Railroad will not allow the name of any person, association or corporation to be placed on any unit of the Equipment as a designation that might be interpreted as a claim of ownership; provided, however, that the Railroad may cause the Equipment to be lettered with the names or initials or other insignia of the Railroad or its affiliates.

ARTICLE 8. Casualty Occurrences. In the event that any unit of the Equipment shall be worn out, lost, stolen, destroyed, irreparably damaged or otherwise rendered permanently unfit for use from any cause whatsoever, or taken or requisitioned by condemnation or otherwise (such occurrences being hereinafter called Casualty Occurrences), the Railroad shall promptly (after it has knowledge of such Casualty Occurrence) and fully inform the Vendor in regard thereto. When the aggregate Casualty Value (as defined herein) of all units having suffered a Casualty Occurrence (exclusive of units having suffered a Casualty Occurrence with respect to which a payment shall have been made to the Vendor pursuant to this Article 8) hereunder shall exceed $250,000 (or such lesser amount as the Railroad may elect), the Railroad, within 90 days after the Railroad has knowledge of such event, shall file with the Vendor a certificate of an officer of the Railroad setting forth the Casualty Value of each unit of the Equipment having suffered a Casualty Occurrence and shall pay to the Vendor a sum equal to the aggregate Casualty Value as of the date of such payment of such unit or units of the Equipment having suffered a Casualty Occurrence, together with interest on such sum so being prepaid accrued to the date of such prepayment, but without premium, (the Railroad hereby agreeing to make such payment of accrued interest to the Vendor at the time it makes payment of such Casualty Value to the Vendor); provided, however, if and so long as no event of default

shall have occurred and be continuing hereunder, in lieu of making all or any portion of such payment to the Vendor, the Railroad may, on or before the expiration of such 90-day period, cause to be transferred to the Vendor a replacement unit or units of standard gauge railroad equipment (other than passenger or work equipment of types other than locomotives) and receive credit against the Casualty Value payment it would otherwise have been required to make in an amount equal to the value threof. The value of any unit or units of replacement equipment shall be equal to the cost thereof, if new, as specified in the invoice therefor delivered to the Vendor or, if not new, the lesser of (y) the fair market value thereof or (z) the original cost thereof less depreciation at a rate equal to 1/15th of such cost for each year in service, all as set forth in a certificate of an officer of the Railroad delivered to the Vendor at the time of such replacement. Any unit of replacement equipment shall have a remaining useful life (as evidenced by a certificate of an operating officer at the Railroad) at least as long as that which the Equipment being replaced would have had but for the Casualty Occurrence. In case any money is applied to prepay indebtedness, it shall be so applied, together with the interest due thereon, on the business day next following receipt by the Vendor of the appropriate payment, to reduce instalments of the aggregate Conditional Sale Indebtedness thereafter falling due in the inverse order of maturity thereof without premium.

The Casualty Value of each unit of the Equipment (other than a replacement unit) shall be deemed to be that amount which bears the same ratio to the original Purchase Price thereof (less, in the event that the Railroad shall have made any payment or payments under the provisions of subparagraph (a) of the third paragraph of Article 4 hereof, an amount which bears the same ratio to the aggregate of all such payments as the original Purchase Price of such unit bears to the original aggregate Purchase Price of all the Equipment) as the unpaid Conditional Sale Indebtedness (without giving effect to any prepayments then or theretofore made pursuant to this Article 8) as of the date payment is made with respect to such Casualty Occurrence bears to the original Conditional Sale Indebtedness. The Casualty Value of each replacement unit shall be deemed to be that amount which bears the same ratio to the portion of the cost thereof paid by the Vendor as the unpaid Conditional Sale Indebtedness ness (without giving effect to any prepayments then or theretofore made pursuant to this Article 8) as of the date payment

is made with respect to such Casualty Occurrence bears to the unpaid Conditional Sale Indebtedness (without giving effect to any such prepayments) as of the date of acquisition by the Vendor of such replacement unit.

The Railroad will cause any replacement unit or units to be marked as provided in Article 7 hereof. Any and all such replacements of Equipment shall constitute accessions to the Equipment and shall be subject to all appropriate terms and conditions of this Agreement as though part of the original Equipment delivered hereunder and shall be included in the term "Equipment" as used in this Agreement. Title to all such replacement units shall be free and clear of all liens and encumbrances except the liens permitted by the second paragraph of Article 12 hereof and shall be taken initially and shall remain in the name of the Vendor subject to the provisions hereof, and the Railroad shall execute, acknowledge, deliver, file, record or deposit all such documents and do any and all such acts as may be necessary to cause such replacement units to come under and be subject to this Agreement. All such replacement units shall be guaranteed and warranted in like manner as is customary at the time for similar equipment. Whenever the Railroad shall cause to be transferred to the Vendor a unit or units of replacement Equipment, the Railroad shall deliver to the Vendor an executed counterpart of an opinion of counsel covering the matters set forth in this paragraph.

In order to facilitate the sale or other disposition of any Equipment suffering a Casualty Occurrence, in respect of which the Railroad shall have paid to the Vendor the Casualty Value and/or shall have caused to be transferred to the Vendor a unit or units of replacement Equipment, the Vendor shall, upon request of the Railroad, execute and deliver to the Railroad or the Railroad's vendee, assignee or nominee, a bill of sale (without warranties) for such Equipment, and such other documents as may be required to release such Equipment from the terms and scope of this Agreement, in such form as may be reasonably requested by the Railroad.

The Railroad will at all times prior to the payment in full of the Conditional Sale Indebtedness together with interest thereon and all other payments required hereby, at its own expense, cause to be carried and maintained insurance in respect of the Equipment consisting of locomotives at the time subject hereto, and public liability insurance,

in amounts and against risks customarily insured against by railroad companies on similar equipment, and in any event in amounts and against risks comparable to those insured against by the Railroad on equipment owned by it; provided, however, that the Railroad may act as self-insurer in respect of losses and damage not exceeding $3,000,000 in respect of any single occurrence.

ARTICLE 9. Maintenance; Compliance with Laws and Rules. The Railroad will at all times maintain the Equipment or cause the Equipment to be maintained in good order and repair at its own expense.

During the term of this Agreement, the Railroad will at all times comply in all respects with all laws of the jurisdictions in which its operations involving the Equipment may extend, with the interchange rules of the Asociation of American Railroads and with all lawful rules of the Department of Transportation, Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Equipment, to the extent that such laws and rules affect the title, operation or use of the Equipment, and in the event that such laws or rules require any alteration, replacement or addition of any part on any unit of the Equipment, the Railroad will conform therewith, at its own expense; provided, however, that the Railroad may, in good faith, contest the validity or application of any such law or rule in any reasonable manner which does not, in the opinion of the Vendor, adversely affect the property or rights of the Vendor under this Agreement.

ARTICLE 10. Reports and Inspections. On or before March 31 in each year, commencing with the calendar year 1976, the Railroad shall furnish to the Vendor an accurate statement signed by an officer of the Railroad (a) setting forth as at the preceding December 31 the amount, description and numbers of all units of the Equipment that have suffered a Casualty Occurrence during the preceding calendar year (or since the date of this Agreement in the case of the first such statement) or that have been withdrawn from use pending repairs (other than running repairs) and such other information regarding the condition and state of repair of the Equipment as the Vendor may reasonably request and (b) stating that, in the case of all Equipment repaired or repainted during the period covered by such statement, the numbers and markings required by Article 7 hereof have

been preserved or replaced. During the term of this Agreement, the Vendor shall have the right, by its agents, to inspect the Equipment and the Railroad's records with respect thereto at such times and locations as the Vendor may reasonably request.

The Railroad shall furnish (i) as soon as available and in any event within 60 days after the end of each quarterly period, except the last, of each fiscal year, a balance sheet of the Railroad (as filed with the Interstate Commerce Commission (hereinafter called the ICC)) as at the end of such period, and an income statement of the Railroad as filed with the ICC for the period beginning on the first day of such fiscal year and ending on the date of such balance sheet, setting forth comparative figures for the corresponding period of the preceding fiscal year, all in reasonable detail and certified by the principal accounting officer of the Railroad, and (ii) as soon as available and in any event within 120 days after the end of each fiscal year, a copy of the Railroad's annual report as filed with the ICC, which shall include the balance sheet, income statement and statement of retained income of the Railroad certified by the principal accounting officer of the Railroad and which shall be accompanied by a letter from the independent accountants for Santa Fe Industries, Inc., the parent of the Railroad, stating that such financial statements, restated to generally accepted accounting principles, were included in the certified consolidated financial statement of Santa Fe Industries, Inc., and that such certified financial statements are not qualified with respect to the Railroad and, in the event a restatement to generally accepted accounting principles is required, such letter shall be accompanied by a schedule which shall describe such restatement in reasonable detail.

ARTICLE 11. Possession and Use. The Railroad, so long as an event of default shall not have occurred under this Agreement and be continuing, shall be entitled to the possession of the Equipment and the use thereof upon the lines of railroad owned or operated by it either alone or jointly with others and whether under lease or otherwise, or upon the lines of railroad owned or operated by any railroad company controlled by, or under common control with, the Railroad, or over which it has trackage rights, or upon connecting and other carriers in the usual interchange of traffic, from and after delivery of the Equipment by the Builder to the Railroad, but only upon and subject to all the terms and conditions of this Agreement.

ARTICLE 12. Prohibition Against Liens. The Railroad will pay or discharge any and all sums claimed by any party from, through or under the Railroad or its successors or assigns which, if unpaid, might become a lien, charge or security interest on the Equipment, or any unit thereof, equal or superior to the Vendor's title thereto or property therein; provided, however, that the Railroad shall be under no obligation to pay or discharge any such claim so long as it is contesting in good faith and by appropriate legal proceedings such claim and the nonpayment thereof does not, in the opinion of the Vendor, adversely affect the property or rights of the Vendor in or to the Equipment or otherwise under this Agreement. Any amounts paid by the Vendor in discharge of liens, charges or security interests upon the Equipment shall be secured by and under this Agreement.

This covenant will not be deemed breached by reason of liens for taxes, assessments or governmental charges or levies, in each case not due and delinquent, or undetermined or inchoate materialmen's, mechanics', workmen's, repairmen's or other like liens arising in the ordinary course of business and, in each case, not delinquent.

ARTICLE 13. Railroad's Indemnities. The Railroad agrees to indemnify, protect and hold harmless the Vendor from and against all losses, damages, injuries, liabilities, claims and demands whatsoever, regardless of the cause thereof, and expenses in connection therewith, including counsel fees, arising out of retention by the Vendor of title to the Equipment, the use and operation thereof by the Railroad during the period when title thereto remains in the Vendor or the transfer of title to the Equipment by the Vendor pursuant to any of the provisions of this Agreement, except, however, any losses, damages, injuries, liabilities, claims and demands whatsoever arising out of any tort, breach of warranty or failure to perform any covenant hereunder by any Builder. This covenant of indemnity shall continue in full force and effect notwithstanding the full payment of all sums due under this Agreement, or the satisfaction, discharge or termination of this Agreement in any manner whatsoever.

ARTICLE 14. Patent Indemnities; Builder's Warranty of Material and Workmanship. Except in cases of articles or materials specified by the Railroad and not manufactured by a Builder and in cases of designs, systems, processes, formulae or combinations specified by the Railroad and not

developed or purported to be developed by any Builder, each Builder agrees to indemnify, protect and hold harmless the Railroad from and against any and all liability, claims, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Railroad, its assigns or the users of its respective Equipment because of the use in or about the construction or operation of any of the Equipment of any design, system, process, formula, combination, article or material which infringes or is claimed to infringe on any patent or other right. The Railroad likewise will indemnify, protect and hold harmless the Vendor from and against any and all liability, claims, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Vendor because of the use in or about the construction or operation of any of the Equipment of any article or material specified by the Railroad and not manufactured by a Builder or of any design, system, process, formula or combination specified by the Railroad and not developed or purported to be developed by a Builder which infringes or is claimed to infringe on any patent or other right. Each Builder agrees to and hereby does, to the extent legally possible without impairing any claim, right or cause of action hereinafter referred to, assign, set over and deliver to the Railroad every claim, right and cause of action which such Builder has or hereafter shall have against the seller or sellers of any designs, systems, processes, formulae, combinations, articles or materials specified by the Railroad and purchased or otherwise acquired by such Builder for use in or about the construction or operation of any of the Equipment on the ground that any such design, system, process, formula, combination, article or material or operation thereof infringes or is claimed to infringe on any patent or other right. Each Builder further agrees to execute and deliver to the Railroad or the users of the Equipment all and every such further assurance as may be reasonably requested by the Railroad more fully to effectuate the assignment and delivery of every such claim, right and cause of action. Each Builder will give notice to the Railroad of any claim known to such Builder from which liability may be charged against the Railroad hereunder and the Railroad will give notice to the appropriate Builder of any claim known to the Railroad from which liability may be charged against any Builder hereunder. Such covenants of indemnity shall continue in full force and effect notwithstanding the full payment of all sums due under this Agreement, or the satisfaction,

discharge or termination of this Agreement in any manner whatsoever.

Each Builder's warranty of material and workmanship is set forth in Schedule A hereto.

ARTICLE 15. Assignments. The Railroad will not sell, assign, transfer or otherwise dispose of its rights under this Agreement or, except as provided in Article 11 hereof, transfer the right to possession of any unit of the Equipment without first obtaining the written consent of the Vendor. A sale, assignment, transfer or disposition to a railroad company organized under the laws of the United States of America or any of the states thereof which shall acquire all or substantially all the lines of railroad of the Railroad, and which, by execution of an appropriate instrument satisfactory to the Vendor, shall assume and agree to perform each of, and all, the obligations and covenants of the Railroad under this Agreement, shall not be deemed a breach of this covenant.

All or any of the rights, benefits and advantages of the Vendor under this Agreement, including the right to receive the payments herein provided to be made by the Railroad, may be assigned by the Vendor and reassigned by any assignee at any time or from time to time. No such assignment shall subject any assignee to, or relieve any Builder from, any of the obligations of such Builder to construct and deliver the Equipment in accordance with this Agreement or to respond to its respective warranties and indemnities contained or referred to in Article 14 hereof, or relieve the Railroad of any of its obligations to such Builders under Articles 2, 3, 4, 5, 13 and 14 hereof, Schedule A hereto and this Article 15 or of any other obligation which, according to its terms or context, is intended to survive an assignment.

Upon any such assignment either the assignor or the assignee shall give written notice to the Railroad, together with a counterpart or copy of such assignment, stating the identity and post office address of the assignee, and such assignee shall by virtue of such assignment acquire all the assignor's right, title and interest in and to the Equipment and this Agreement, or in and to a portion thereof, as the case may be, subject only to such reservations as may be contained in such assignment. From and after the receipt by the Railroadd of the notification of any such

assignment, all payments thereafter to be made by the Railroad under this Agreement shall, to the extent so assigned, be made to the assignee in such manner as it may direct.

The Railroad recognizes that it is the custom of railroad equipment manufacturers to assign conditional sale agreements and understands that the assignment of this Agreement, or of some of or all the rights of the Vendor hereunder, is contemplated. The Railroad expressly represents, for the purpose of assurance to any person, firm or corporation considering the acquisition of this Agreement or of all or any of the rights of the Vendor hereunder and for the purposes of inducing such acquisition, that in the event of such assignment by the Vendor as hereinbefore provided, the rights of such assignee to the entire unpaid indebtedness in respect of the Purchase Price or such part thereof as may be assigned, together with interest thereon, as well as any other rights hereunder which may be so assigned, shall not be subject to any defense, setoff, counterclaim or recoupment whatsoever arising out of any breach of any obligation of a Builder with respect to the Equipment or the manufacture, construction, delivery or warranty thereof, or with respect to any indemnity herein contained, nor subject to any defense, setoff, counterclaim or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to the Railroad by a Builder. Any and all such obligations, howsoever arising, shall be and remain enforceable by the Railroad against and only against the respective Builders.

The Railroad will (a) in connection with each settlement for the Equipment subsequent to such assignment, deliver to the assignee, at least five business days prior to the Closing Date for the Group fixed in the notice by the Railroad, all documents required by the terms of such assignment to be delivered to such assignee in connection with such settlement, in such number of counterparts or copies as may reasonably be requested, except for any opinion of counsel for such assignee, and (b) furnish to such assignee such number of counterparts of any other certificate or paper required by the Vendor as may reasonably be requested.

If this Agreement shall have been assigned by the Builders and the assignee shall not make payment to a Builder with respect to units of its Equipment as provided in the instrument making such assignment, such Builder will promptly notify the Railroad of such event and, if such

amount shall not have been previously paid by such assignee, the Railroad will, not later than 90 days after the date such payment was due, pay or cause to be paid to such Builder the aggregate unpaid Purchase Price of such units of its Equipment, together with interest from the day such payment was due to the date of payment by the Railroad at the highest prime rate of interest charged by any of the four New York City banks having the largest total assets, in effect on the date such payment was due.

ARTICLE 16. Defaults. In the event that any one or more of the following events of default shall occur and be continuing, to wit:

(a) the Railroad shall fail to pay in full any indebtedness in respect of the Purchase Price of the Equipment or any other sum payable by the Railroad as provided in this Agreement within ten days after payment thereof shall be due hereunder; or

(b) the Railroad shall, for more than 30 days after the Vendor shall have demanded in writing performance thereof, fail or refuse to comply with any covenant, agreement, term or provision of this Agreement, or of any agreement entered into concurrently herewith relating to the financing of the Equipment on its part to be kept or performed or to make provision satisfactory to the Vendor for such compliance; or

(c) a petition for reorganization under Section 77 of the Bankruptcy Act, as now constituted or as said Section 77 may be hereafter amended, shall be filed by or against the Railroad and, unless such petition shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Railroad under this Agreement shall not have been (and shall not continue to have been) duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees appointed (whether or not subject to ratification) in such proceedings in such manner that such obligations shall have the same status as obligations incurred by such trustee or trustees, within 30 days after such appointment, if any, or 60 days after such petition shall have been filed, whichever shall be earlier; or

(d) any other proceedings shall be commenced by or against the Railroad for any relief under any bankruptcy or insolvency law, or law relating to the relief of debtors, readjustments of indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which does not permit any readjustment of the indebtedness payable hereunder), and, unless such proceedings shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Railroad under this Agreement shall not have been (and shall not continue to have been) duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed (whether or not subject to ratification) for the Railroad or for its property in connection with any such proceedings in such manner that such obligations shall have the same status as obligations incurred by such trustee or trustees or receiver or receivers, within 30 days after such appointment, if any, or 60 days after such proceedings shall have been commenced, whichever shall be earlier; or

(e) the Railroad shall make or suffer any unauthorized assignment or transfer of this Agreement or any interest herein or any unauthorized transfer of the right to possession of any unit of the Equipment;

then at any time after the occurrence of such an event of default the Vendor may, upon written notice to the Railroad and upon compliance with any mandatory legal requirements then in force and applicable to such action by the Vendor, declare (hereinafter called a Declaration of Default) the entire indebtedness in respect of the Purchase Price of the Equipment, together with the interest thereon then accrued and unpaid, immediately due and payable, without further demand, and thereafter the aggregate of the unpaid balance of such indebtedness and interest shall bear interest from the date of such Declaration of Default at the rate per annum specified in Article 4 hereof as being applicable to amounts remaining unpaid after becoming due and payable, to the extent legally enforceable. The Vendor shall thereupon be entitled to recover judgment for the entire unpaid balance of the indebtedness in respect of the Purchase Price of the Equipment so payable, with interest as aforesaid, and to collect such judgment out of any property of

the Railroad wherever situated. The Railroad shall promptly notify the Vendor of any event which has come to its attention which constitutes, or which with the giving of notice and/or lapse of time could constitute, an event of default under this Agreement.

The Vendor may at its election waive any such event of default and its consequences and rescind and annul any Declaration of Default by notice to the Railroad in writing to that effect, and thereupon the respective rights of the parties shall be as they would have been if no such event of default had occurred and no Declaration of Default had been made. Notwithstanding the provisions of this paragraph, it is expressly understood and agreed by the Railroad that time is of the essence of this Agreement and that no such waiver, rescission or annulment shall extend to or affect any other or subsequent default or impair any rights or remedies consequent thereon.

ARTICLE 17. Remedies. At any time during the continuance of a Declaration of Default, the Vendor may, subject to compliance with any mandatory legal requirements then in force and applicable to the action to be taken by the Vendor, take or cause to be taken by its agent or agents immediate possession of the Equipment, or one or more of the units thereof, without liability to return to the Railroad any sums theretofore paid and free from all claims whatsoever, except as hereinafter in this Article 17 expressly provided, and may remove the same from possession and use of the Railroad or any other person and for such purpose may enter upon the Railroad's premises or any other premises where the Equipment may be located and may use and employ in connection with such removal any supplies, services and aids and any available trackage and other facilities or means of the Railroad.

In case the Vendor shall demand possession of the Equipment pursuant to this Agreement and shall reasonably designate a point or points upon the premises of the Railroad for the delivery of the Equipment to the Vendor, the Railroad shall, at its own expense, forthwith and in the usual manner (including, but not by way of limitation, giving prompt telegraphic and written notice to the Association of American Railroads and all railroads to which any part of the Equipment has been interchanged to return the Equipment so interchanged), cause (a) the Equipment to be moved to such point or points on its lines as shall

be designated by the Vendor and shall there deliver the Equipment or cause it to be delivered to the Vendor and (b) the Equipment to be moved to such interchange point or points of the Railroad as shall be designated by the Vendor upon any sale, lease or other disposal of all or any part of the Equipment by the Vendor. At the option of the Vendor, the Vendor may keep the Equipment on any of the lines or premises of the Railroad until the Vendor shall have leased, sold or otherwise disposed of the same, and for such purpose the Railroad agrees to furnish, without charge for rent or storage, the necessary facilities at any point or points selected by the Vendor reasonably convenient to the Railroad and, at the Railroad's risk, to permit inspection of the Equipment by the Vendor, the Vendor's representatives and prospective purchasers and users. This agreement to deliver the Equipment and furnish facilities as hereinbefore provided is of the essence of the agreement between the parties, and, upon application to any court of equity having jurisdiction in the premises, the Vendor shall be entitled to a decree against the Railroad requiring specific performance hereof. The Railroad hereby expressly waives any and all claims against the Vendor and its agent or agents for damages of whatever nature in connection with any retaking of any unit of the Equipment in any reasonable manner.

At any time during the continuance of a Declaration of Default, the Vendor (after retaking possession of the Equipment as hereinbefore in this Article 17 provided) may at its election and upon such notice as is hereinafter set forth retain the Equipment in satisfaction of the entire indebtedness in respect of the Purchase Price of the Equipment and make such disposition thereof as the Vendor shall deem fit. Written notice of the Vendor's election to retain the Equipment shall be given to the Railroad by telegram or registered mail, addressed as provided in Article 21 hereof, and to any other persons to whom the law may require notice, within 30 days after such Declaration of Default. In the event that the Vendor should elect to retain the Equipment and no objection is made thereto within the 30-day period described in the second proviso below, all the Railroad's rights in the Equipment shall thereupon terminate and all payments made by the Railroad may be retained by the Vendor as compensation for the use of the Equipment by the Railroad; <u>provided, however</u>, that if the Railroad, before the expiration of the 30-day period described in the proviso below,

should pay or cause to be paid to the Vendor the total unpaid balance of the indebtedness in respect of the Purchase Price of the Equipment, together with interest thereon accrued and unpaid and all other payments due under this Agreement as well as expenses of the Vendor in retaking possession of, removing and storing the Equipment and the Vendor's reasonable attorneys' fees, then in such event absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Railroad; provided, further, that if the Railroad or any other persons notified under the terms of this paragraph object in writing to the Vendor within 30 days from the receipt of notice of the Vendor's election to retain the Equipment, then the Vendor may not so retain the Equipment, but shall sell, lease or otherwise dispose of it or continue to hold it pending sale, lease or other disposition as hereinafter provided or as may otherwise be permitted by law. If the Vendor shall have given no notice to retain as hereinabove provided or notice of intention to dispose of the Equipment in any other manner, it shall be deemed to have elected to sell the Equipment in accordance with the provisions of this Article 17.

At any time during the continuance of a Declaration of Default, the Vendor, with or without retaking possession thereof, at its election and upon reasonable notice to the Railroad and to any other persons to whom the law may require notice of the time and place, may sell the Equipment, or any unit thereof, free from any and all claims of the Railroad or any other party claiming from, through or under the Railroad, at law or in equity, at public or private sale and with or without advertisement as the Vendor may determine; provided, however, that if, prior to such sale and prior to the making of a contract for such sale, the Railroad should tender full payment of the total unpaid balance of the indebtedness in respect of the Purchase Price of the Equipment, together with interest thereon accrued and unpaid and all other payments due under this Agreement as well as expenses of the Vendor in retaking possession of, removing, storing, holding and preparing the Equipment for, and otherwise arranging for, the sale and the Vendor's reasonable attorneys' fees, then in such event absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Railroad. The proceeds of such sale, less the attorneys' fees and any other expenses incurred by the Vendor in retaking possession of, removing, storing,

holding, preparing for sale and selling the Equipment, shall be credited on the amount due to the Vendor under the provisions of this Agreement.

Any sale hereunder may be held or conducted at such place or places and at such time or times as the Vendor may specify, in one lot and as an entirety or in separate lots and without the necessity of gathering at the place of sale the property to be sold, and in general in such manner as the Vendor may determine. The Vendor or the Railroad may bid for and become the purchaser of the Equipment, or any unit thereof, so offered for sale. The Railroad shall be given written notice of such sale not less than ten days prior thereto, by telegram or registered mail addressed to the Railroad as provided in Article 21 hereof. If such sale shall be a private sale (which shall be deemed to mean only a sale where an advertisement for bids has not been published in a newspaper of general circulation or a sale where less than 40 railroads have been solicited in writing to submit bids), it shall be subject to the right of the Railroad to purchase or provide a purchaser, within ten days after notice of the proposed sale price, at the same price offered by the intending purchaser or a better price. In the event that the Vendor shall be the purchaser of the Equipment, it shall not be accountable to the Railroad (except to the extent of surplus money received as hereinafter provided in this Article 17), and in payment of the purchase price therefor the Vendor shall be entitled to have credited on account thereof all or any part of the sums due to the Vendor from the Railroad hereunder. From and after the date of any such sale, the Railroad shall pay to the Vendor the per diem interchange for each unit of Equipment which shall not have been assembled, as hereinabove provided, by the date of such sale for each day from the date of such sale to the date of delivery to the Purchaser at such sale.

Each and every power and remedy hereby specifically given to the Vendor shall be in addition to every other power and remedy hereby specifically given or now or hereafter existing at law or in equity, and each and every power and remedy may be exercised from time to time and simultaneously and as often and in such order as may be deemed expedient by the Vendor. All such powers and remedies shall be cumulative, and the exercise of one shall not be deemed a waiver of the right to exercise any other or others. No delay or omission of the Vendor in the exercise of any such power or

remedy and no renewal or extension of any payments due hereunder shall impair any such power or remedy or shall be contrued to be a waiver of any default or an acquiescence therein. Any extension of time for payment hereunder or other indulgence duly granted to the Railroad shall not otherwise alter or affect the Vendor's rights or the Railroad's obligations hereunder. The Vendor's acceptance of any payment after it shall have become due hereunder shall not be deemed to alter or affect the Railroad's obligations or the Vendor's rights hereunder with respect to any subsequent payments or default therein.

If, after applying all sums of money realized by the Vendor under the remedies herein provided, there shall remain any amount due to it under the provisions of this Agreement, the Railroad shall pay the amount of such deficiency to the Vendor upon demand, together with interest from the date of such demand to the date of payment by the Railroad at the rate per annum set forth in Article 4 hereof applicable to amounts remaining unpaid after becoming due and payable. If the Railroad shall fail to pay such deficiency, the Vendor may bring suit therefor and shall be entitled to recover a judgment therefor against the Railroad. If, after applying as aforesaid all sums realized by the Vendor, there shall remain a surplus in the possession of the Vendor, such surplus shall be paid to the Railroad.

The Railroad will pay all reasonable expenses, including attorneys' fees, incurred by the Vendor in enforcing its remedies under the terms of this Agreement. In the event that the Vendor shall bring any suit to enforce any of its rights hereunder and shall be entitled to judgment, then in such suit the Vendor may recover reasonable expenses, including attorneys' fees, and the amount thereof shall be included in such judgment.

The foregoing provisions of this Article 17 are subject in all respects to all mandatory legal requirements at the time in force and applicable thereto.

Article 18. Applicable State Laws. Any provision of this Agreement prohibited by any applicable law of any jurisdiction (which is not overridden by applicable federal law) shall as to such jurisdiction be ineffective, without modifying the remaining provisions of this Agreement. Where, however, the conflicting provisions of any such applicable

law may be waived, they are hereby waived by the Railroad to the full extent permitted by law, it being the intention of the parties hereto that this Agreement shall be deemed to be a conditional sale and enforced as such.

Except as otherwise provided in this Agreement, the Railroad, to the full extent permitted by law, hereby waives all statutory or other legal requirements for any notice of any kind, notice of intention to take possession of or to sell or lease the Equipment, or any unit thereof, and any other requirements as to the time, place and terms of the sale or lease thereof, any other requirements with respect to the enforcement of the Vendor's rights under this Agreement and any and all rights of redemption.

ARTICLE 19. Recording. The Railroad will cause this Agreement, any assignments hereof and any amendments or supplements hereto or thereto to be filed and recorded with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act; and the Railroad will from time to time do and perform any other act and will execute, acknowledge, deliver, file, register, deposit and record any and all further instruments required by law or reasonably requested by the Vendor for the purpose of proper protection, to the satisfaction of counsel for the Vendor, of its title to the Equipment and its rights under this Agreement or for the purpose of carrying out the intention of this Agreement; and the Railroad will promptly furnish to the Vendor certificates or other evidence of such filing, registering, depositing and recording satisfactory to the Vendor.

ARTICLE 20. Payment of Expenses. The Railroad will pay all reasonable costs and expenses (other than the fees and expenses of counsel for any Builder) incident to this Agreement and the first assignment of this Agreement, and any instrument supplemental or related hereto or thereto, including all fees and expenses of counsel for the first assignee of this Agreement, and all reasonable costs and expenses in connection with the transfer by any party of interests acquired in such first assignment. If the first assignee is not an agent, such assignee may appoint a bank or trust company located in either the Borough of Manhattan, City and State of New York, or Chicago, Illinois, having capital and surplus aggregating at least $40,000,000 to act as agent on its behalf to hold all the right, title and interests of the Builders under this Agreement assigned

to it, all upon and subject to the terms and conditions provided for in a written agreement to be entered into by the first assignee and such agent in form and substance satisfactory to the first assignee and such agent; and the Railroad hereby agrees to pay all reasonable costs and expenses of such Agent. Prior to appointing such an agent, the assignee shall consult with the Railroad and shall give reasonable consideration to the recommendations of the Railroad as to the bank or trust company to be appointed.

ARTICLE 21. Notice. Any notice hereunder to any of the parties designated below shall be deemed to be properly served if delivered or mailed to it at its chief place of business at the following specified addresses:

(a) to the Railroad, at 80 East Jackson Street, Chicago, Illinois 60604, attention of R. W. Harper, Vice President-Finance.

(b) to a Builder, at its address specified in Item 1 of Schedule A hereto, and

(c) to any assignee of the Vendor or of the Railroad, at such address as may have been furnished in writing to each of the other parties hereto by such assignee,

or at such other address as may have been furnished in writing by such party to the other parties to this Agreement.

ARTICLE 22. Article Heading; Effect and Modification of Agreement. All article headings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

This Agreement, including the Schedules hereto, exclusively states the rights of the Vendor and the Railroad with respect to the Equipment and supersedes all other agreements, oral or written, with respect to the Equipment. No variation or modification of this Agreement and no waiver of any of its provisions or conditions shall be valid unless in writing and signed by duly authorized officers of the Vendor and the Railroad.

ARTICLE 23. Law Governing. The Railroad warrants that its chief place of business and its chief executive offices are located in the State of Illinois. The terms

of this Agreement and all rights and obligations hereunder shall be governed by the laws of the State of Illinois; provided, however, that the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act and such additional rights arising out of the filing, recording or deposit hereof, if any, and of any assignment hereof as shall be conferred by the laws of the several jurisdictions in which this Agreement or any assignment hereof shall be filed, recorded or deposited.

ARTICLE 24. Execution. This Agreement may be executed in any number of counterparts, and such counterparts together shall constitute but one and the same contract. It shall not be necessary that any counterpart be signed by all the parties so long as any counterpart be signed by the Railroad and one or more Builders. If this Agreement is assigned by any Builder, the original counterpart of this Agreement shall be deemed to be the counterpart executed by such Builder and delivered to such assignee. Each Builder shall be bound hereunder, notwithstanding the failure of any other Builder to execute and deliver this Agreement, or perform its obligations hereunder. Although this Agreement is dated, for convenience, as of the date first set forth above, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

IN WITNESS WHEREOF, the parties hereto, each pursuant to due corporate authority, have caused this instrument to be executed in their respective corporate names by their officers, thereunto duly authorized, and their respective corporate seals to be hereunto affixed, duly attested, all as of the date first above written.

GENERAL MOTORS CORPORATION
(Electro-Motive Division)

by P.K. Hoglund
Vice President

[Corporate Seal]

Attest:
M.A. Thomas
Assistant Secretary

FMC CORPORATION,

by

_____
Vice President

[Corporate Seal]

Attest:

_____
Assistant Secretary

PULLMAN INCORPORATED
(Pullman-Standard division),

by

_____
Vice President

[Corporate Seal]

Attest:

_____
Assistant Secretary

GENERAL ELECTRIC COMPANY,

by

_____
Manager-Marketing,
Locomotive Products Department

[Corporate Seal]

Attest:

_____
Attesting Secretary

PACCAR INC,

by

_____
Vice President

[Corporate Seal]

Attest:

_____
Assistant Secretary

ACF INDUSTRIES, INCORPORATED,

by

_____
Vice President

[Corporate Seal]

Attest:

_____
Assistant Secretary

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY,

by

_____
Vice President-Finance

[Corporate Seal]

Attest:

_____
Assistant Secretary

STATE OF ILLINOIS,)
) ss.:
COUNTY OF COOK,)

On this 3RD day of FEBRUARY 1975, before me personally appeared P. K. HOGLUND, to me personally known, who, being by me duly sworn, says that he is a Vice President of GENERAL MOTORS CORPORATION (Electro-Motive Division), that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Zula C. Clair
Notary Public

[Notarial Seal]

My Commission Expires JULY 11, 1976

STATE OF ILLINOIS,)
) ss.:
COUNTY OF COOK,)

On this day of 1975, before me personally appeared , to me personally known, who, being by me duly sworn, says that he is a Vice President of FMC CORPORATION, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Notary Public

[Notarial Seal]

My Commission Expires

STATE OF ILLINOIS,)
) ss.:
COUNTY OF COOK,)

On this day of 1975, before me personally appeared , to me personally known, who, being by me duly sworn, says that he is a Vice President of PULLMAN INCORPORATED (Pullman-Standard division), that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

_____
Notary Public

[Notarial Seal]

My Commission Expires

COMMONWEALTH OF PENNSYLVANIA,)
) ss.:
COUNTY OF ERIE,)

On this day of 1975, before me personally appeared , to me personally known, who, being by me duly sworn, says that he is Manager-Marketing, Locomotive Products Department, of GENERAL ELECTRIC COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

_____
Notary Public

[Notarial Seal]

My Commission Expires

STATE OF WASHINGTON,)
) ss.:
COUNTY OF KING,)

On this day of 1975, before me personally appeared , to me personally known, who, being by me duly sworn, says that he is a Vice President of PACCAR INC, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

_____
Notary Public

[Notarial Seal]

My Commission Expires

STATE OF NEW YORK,)
) ss.:
COUNTY OF NEW YORK,)

On this day of 1975, before me personally appeared , to me personally known, who, being by me duly sworn, says that he is a Vice President of ACF INDUSTRIES, INCORPORATED, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

_____
Notary Public

[Notarial Seal]

My Commission Expires

STATE OF ILLINOIS,)
) ss.:
COUNTY OF COOK,)

On this 31st day of January, 1975, before me personally appeared R. E. HARPER, to me personally known, who, being by me duly sworn, says that he is a Vice President of THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

E. M. Arrequin
Notary Public

[Notarial Seal]

My Commission Expires
FEBRUARY 1, 1977

SCHEDULE A

Item 1: (a) General Motors Corporation (Electro-Motive Division), a Delaware corporation, La Grange, Illinois 60525.

(b) FMC Corporation, a Delaware corporation, 4700 Northwest Front Avenue, Portland, Oregon 97210.

(c) Pullman Incorporated (Pullman Standard division), a Delaware corporation, 200 South Michigan Avenue, Chicago, Illinois 60604.

(d) General Electric Company, a New York corporation, 2901 East Lake Road, Erie, Pennsylvania 16501.

(e) PACCAR Inc, a Delaware corporation, 1400 North 4th Street, Renton, Washington 98055.

(f) ACF Industries, Incorporated, a New Jersey corporation, 750 Third Avenue, New York, New York 10017.

Item 2: (a) (General Motors Corporation (Electro-Motive Division)): The Builder warrants that the Equipment will be built in accordance with the Specifications and the standards and requirements set forth in Article 2 of the Conditional Sale Agreement to which this Schedule is attached (hereinafter called the Agreement) and warrants that the Equipment will be free from defects in material (except as to specialties incorporated therein which were specified by the Railroad and not manufactured by the Builder) and workmanship under normal use and service; the Builder's obligations under this paragraph being limited to making good at its plant any part or parts of any unit of the Equipment which, within two years after the delivery of such unit to the Railroad or before such unit has been in scheduled service 250,000 miles (whichever event shall first occur), shall be returned to the Builder with transportation charges

prepaid and which the Builder's examination shall disclose to its satisfaction to have been thus defective.

This warranty of the Builder shall not apply (i) to any locomotive components which shall have been repaired or altered unless repaired or altered by the Builder or its authorized service representatives, if, in its judgment, such repairs or alterations affect the stability of a unit of the Equipment or (ii) to any unit of the Equipment which has been subject to misuse, negligence or accident.

This warranty is expressly in lieu of all other warranties expressed or implied, including any implied warranty of merchantability or fitness for a particular purpose, and of all other obligations or liabilities on the part of the Builder, except for its obligations under Articles 2, 3, 4 and 14 of the Agreement. The Builder neither assumes nor authorizes any person to assume for it any other liability in connection with the construction and delivery of the Equipment, except as aforesaid.

The Builder further agrees with the Railroad that neither the inspection as provided in Article 3 of the Agreement, nor any examination, nor the acceptance of any units of the Equipment as provided in Article 3 of the Agreement shall be deemed a waiver or a modification by the Railroad of any of its rights hereunder.

The Builder further agrees to hold harmless the Railroad from claims, costs and liability to the Builder's employees arising out of and in the course of their employment and while on the Railroad's premises or equipment except when traveling as revenue passengers on the Railroad's trains, and except that the Builder shall not be liable for the Railroad's sole negligence.

The Builder reserves the right to make change

in the design of, or add any improvements to, units of the Equipment at any time without incurring any obligation to make similar changes or additions in respect of units of Equipment previously delivered to the Railroad.

(b) (FMC Corporation): The Builder warrants that the Equipment will be built in accordance with the Specifications and the standards and conditions set forth in Article 2 of the Conditional Sale Agreement to which this Schedule is attached (hereinafter called the Agreement), and, except in cases of articles and materials specified by the Railroad and not manufactured by the Builder, warrants the Equipment to be free from defects in material and workmanship under normal use and service, the liability of the Builder under this warranty being limited, as the Railroad may elect: (i) to repair of the defect at the Builder's plant at Portland, Oregon; or (ii) to replacement of the defective part; or (iii) to the cost of repair or replacement according to the AAR Code of Rules Governing Condition of and Repairs to Freight and Passenger Cars with Interchange of Traffic.

The foregoing warranty of the Builder shall begin at the time of delivery of a unit of Equipment to the Railroad and terminate one year after such delivery. <u>This warranty is expressly in lieu of all other warranties expressed or implied on the part of the Builder</u>, except for the patent indemnification included in Article 14 of of the Agreement and except as hereinafter provided in this Schedule A, and the Builder neither assumes nor authorizes any person to assume for it any other warranty liability in connection with the construction and delivery of the Equipment.

The Builder further agrees that the Railroad shall have the right to repair the Equipment furnished by the Builder of its manufacture and that repair parts for such equipment may be made by, or for, the Railroad or purchased

in the open market, as the Railroad may determine; and it is agreed the Equipment may be repaired by other railroads no matter where the repair parts are obtained. This agreement includes the right on the part of the Railroad to purchase repair parts for such Equipment in anticipation of breakage, instead of waiting until the breakage actually occurs before ordering the repair parts.

The Builder's patent indemnification set forth in Article 14 of the Agreement does not apply to designs, systems, processes and formulae utilized by the Builder in or about the construction of the Equipment, or any unit thereof, as the result of specification by the Railroad, other than for patents or other rights controlled by the Builder; and the Railroad shall indemnify and save harmless the Builder and/or manufacturer and the Vendor for the use of any designs, systems, processes and formulae utilized by the Builder in or about the construction of the Equipment, or any unit thereof, as the result of specification by the Railroad, as against any patent infringement claims or damages as specified in said Article 14, other than for patents or other rights controlled by the Builder.

The Builder will hold harmless the Railroad from claims, costs and liability to Builder's employees arising out of and in the course of their employment and while on the Railroad's premises or equipment except when traveling as revenue passengers on the Railroad's trains.

(c) (Pullman Incorporated (Pullman-Standard division)): The Builder warrants that the Equipment will be built in accordance with the Specifications and the standards and requirements set forth in Article 2 of the Conditional Sale Agreement to which this Schedule is attached (hereinafter called the Agreement) and warrants the Equipment will be free from defects in material (except as to specialties incorporated therein specified by the Railroad

and not manufactured by the Builder) and workmanship and design under normal use and service, the Builder's obligation under this Item 2 being limited to making good at its plant any part or parts of any unit of Equipment which shall, within one year after the delivery of such unit of Equipment to the Railroad, be returned to the Builder with transportation charges prepaid and which examination by the Builder shall disclose to its satisfaction to have been thus defective.

The foregoing warranty is expressly in lieu of all other warranties, expressed or implied, including any implied merchantability or fitness for a particular purpose, and of all other obligations or liabilities on the part of the Builder, except for its obligations under Articles 2, 3, 4 and 14 of the Agreement, and the Builder neither assumes nor authorizes any person to assume for it any other liability in connection with the construction of the Equipment and delivery of the Equipment, except as aforesaid. It is further understood and agreed that in no event shall the Builder be liable for indirect or consequential damages of any kind.

The Builder further agrees with the Railroad that neither the inspection provided in Article 3 of the Agreement, nor any examination, nor the acceptance of any units of the Equipment as provided in said Article 3 shall be deemed a waiver or a modification by the Railroad of any of its rights under this Item 2.

(d) (General Electric Company): The Builder warrants that the Equipment will be built in accordance with the Specifications and the standards and requirements referred to in Article 2 of the Conditional Sale Agreement to which this Schedule is attached (hereinafter called the Agreement) and warrants the equipment will be free from defects in material (except as to specialties incorporated therein that are not of the Builder's own specification or design) and workmanship under normal use

and service; the Builder's obligations under this paragraph being limited to making good at its plant any part or parts of any unit of the Equipment which, within one year after the delivery of such unit to the Railroad, shall be returned to the Builder with transportation charges prepaid and which the Builder's examination shall disclose to its satisfaction to have been thus defective.

This warranty of the Builder shall not apply (i) to any locomotive components which shall have been repaired or altered, unless repaired or altered by the Builder or its authorized service representatives, if, in its judgment, such repairs or alterations affect the stability of a unit of the Equipment or (ii) to any unit of the Equipment which has been subject to misuse, negligence or accident.

THIS WARRANTY IS EXPRESSLY IN LIEU OF ALL OTHER WARRANTIES EXPRESSED OR IMPLIED, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND OF ALL OTHER OBLIGATIONS OR LIABILITIES ON THE PART OF THE BUILDER, EXCEPT FOR ITS OBLIGATIONS UNDER THE AGREEMENT. THE BUILDER NEITHER ASSUMES NOR AUTHORIZES ANY PERSON TO ASSUME FOR IT ANY OTHER LIABILITY IN CONNECTION WITH THE CONSTRUCTION AND DELIVERY OF THE EQUIPMENT, EXCEPT AS AFORESAID.

In no event shall the Builder be liable for special or consequential damages. The Builder's liability on any claim of any kind including negligence, or for any loss or damage arising out of, connected with, or resulting from, the Agreement, or from the performance or breach thereof, or from the manufacture, sale, delivery, resale, repair or use of any unit of the Equipment covered by, or furnished under, the Agreement, shall in no case exceed the Purchase Price of such unit of the Equipment involved in the claim, and upon the expiration of the warranty period specified above all such liability shall terminate. The Builder shall have no liability

for any unit of the Equipment or part thereof which becomes defective by reason of improper storage or application, misuse, negligence, accident or improper operation, maintenance, repairs or alterations on the part of the Railroad or any third party other than the Builder. The foregoing warranty shall constitute the sole remedy of the Railroad and the sole liability of the Builder.

It is understood that the Builder has the right to make changes in the design of, or to add improvements to units of the Equipment at any time without incurring any obligations to install, at the Builder's expense, the same or other locomotives sold by Builder.

The Builder further agrees with the Railroad that neither the inspection as provided in the Agreement, nor any examination, nor the acceptance of any units of the Equipment as provided in the Agreement shall be deemed a waiver or a modification by the Railroad of any of its rights under this Item 2.

(e) (PACCAR Inc): The Builder warrants that the Equipment will be built in accordance with the requirements, specifications and standards set forth in Article 2 of the Conditional Sale Agreement to which this Schedule is attached (hereinafter called the Agreement) and, except in cases of articles and materials specified by the Railroad and not manufactured by the Builder, warrants the Equipment to be free from defects in material and workmanship under normal use and service, the liability of the Builder under this warranty being limited, as the Railroad may elect: (i) to repair of the defects at the Builder's plant; or (ii) to replacement of a defective part; or (iii) to the cost of repair or replacement according to the AAR Code of Rules Governinig Condition of and Repairs to Freight and Passenger Cars with Interchange of Traffic. The Builder shall be given reasonable opportunity to verify any claim of defects in workmanship or materials.

The foregoing warranty of the Builder shall begin at the time of delivery of a unit of the Equipment to the Railroad and terminate two years after such delivery. THE BUILDER MAKES NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. The Railroad's right under the foregoing warranty shall be its sole and exclusive remedy and the Builder will have no liability for lost profit or for indirect, incidental, consequential or commercial losses. This warranty is expressly in lieu of all other warranties express or implied on the part of the Builder, except for the patent indemnification included in Article 14 of this Agreement. The Builder neither assumes nor authorizes any person to assume for it any other warranty liability in connection with the construction and delivery of the Equipment.

The Builder further agrees with the Railroad that neither the inspection as provided in Article 3 of the Agreement nor any examination nor the acceptance of any units of the Equipment as provided in said Article 3 shall be deemed a waiver or a modification by the Railroad of any of its rights under this Item 2.

The Builder will hold harmless the Railroad from claims, costs and liability to the Builder's employees arising out of and in the course of their employment and while on the Railroad's premises or equipment except when traveling as revenue passengers on the Railroad's trains.

(f) (ACF Industries, Incorporated): The Builder warrants that the Equipment will be built in accordance with the requirements, specifications and standards set forth in Article 2 of the Conditional Sale Agreement to which this Schedule is attached (hereinafter called this Agreement) and warrants the Equipment will be free from defects in material (except as to specialties incorporated therein which were specified or supplied by the Railroad and not manufactured by the Builder) and

workmanship under normal use and service, the Builder's obligation under this Item 2 being limited to making good at its factory any part or parts of any unit of the Equipment which shall be returned to the Builder with transportation charges prepaid, within one year after the delivery of such unit to the Railroad, and which the Builder's examination shall disclose to its satisfaction to have been thus defective. The foregoing warranty of the Builder is expressly in lieu of all other warranties, express or implied, including any implied warranty of merchantability or fitness for a particular purpose, and of all other obligations or liabilities under Articles 2, 3, 4 and 14 of the Agreement, and the Builder neither assumes nor authorizes any person to assume for it any other liability in connection with the construction and delivery of the Equipment except as aforesaid.

The Builder further agrees that neither the inspection as provided in Article 3 of this Agreement nor any examination nor the acceptance of any units of the Equipment as provided in said Article 3 shall be deemed a waiver or a modification by the Owner-Trustee of any of its rights under this Item 2.

SCHEDULE B

Builder	Type	Quantity	Builder's Specifications	Builder's Plant	Railroad's Numbers (inclusive)	Unit Base Price	Total Base Price	Time and Place of Delivery
(a) General Motors Corporation (Electro-Motive Divison)	2300 h.p. GP-39-2 locomotive	29	8075	McCook, Illinois	362~~6~~7-3654~~4~~5	$355,200	$10,300,800	Prior to April 30, 1975, at Builder's Plant
(b) FMC Corporation	60' 9" 100-ton box car with roller bearings AAR Mechanical Designation XM	400	Job 17620	Portland, Oregon	611000-611399	36,000	14,400,000	March-April, 1975, at Builder's Plant
(c) Pullman Incorporated (Pullman-Standard division)	60' 9" 100-ton box car with roller bearings; AAR Mechanical Designation XL	216	Lot Number 9783	Bessemer, Alabama	611400-611615	33,100	7,149,600	April-May, 1975, at Bessemer, Ala.

SCHEDULE B (Cont'd)

Builder	Type	Quantity	Builder's Specifications	Builder's Plant	Railroad's Numbers (inclusive)	Unit Base Price	Total Base Price	Time and Place of Delivery
(d) General Electric Company	U-36-C, 3600 h.p. locomotive; AAR Mechanical Designation C-C	6	3690E	Erie, Pennsylvania	8794-8799	$436,300	$ 2,617,800	Prior to March 1, 1975, at Erie, Pa.
(e) PACCAR Inc	52' 6", 70-ton insulated box car with roller bearing trucks, cushioned underframe, dual Air'Pak load dividers, 16' doors;	100	PC-339, as revised	Renton, Washington	522800-522899	37,100	3,710,000	Prior to March 1, 1975, at Builder's Plant
(f) ACF Industries, Incorporated	4600 cu. ft., 100-ton covered hopper car with roller bearing trucks and interior coating	400	11-01312, dated November 11, 1974	Huntington, West Virginia	314800-315199	30,000	12,000,000	February-March, 1975, at Russell, Ky.

RECORDATION NO. 7822 Filed & Recorded
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INTERSTATE COMMERCE COMMISSION

CONDITIONAL SALE AGREEMENT

Dated as of January 15, 1975

Among

GENERAL MOTORS CORPORATION
(Electro-Motive Division),
FMC CORPORATION,
PULLMAN INCORPORATED (Pullman Standard division)
GENERAL ELECTRIC COMPANY,
PACCAR INC,
ACF INDUSTRIES, INCORPORATED

and

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY

CONDITIONAL SALE AGREEMENT dated as of January 15, 1975, among each of the corporations named in Item 1 of Schedule A hereto and THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, a Delaware corporation (hereinafter called the Railroad).

WHEREAS each of the corporations named in Item 1 of Schedule A hereto severally have agreed to construct, sell and deliver to the Railroad, and the Railroad has agreed to purchase, the equipment described in Schedule B hereto (hereinafter called the Equipment);

NOW, THEREFORE, in consideration of the mutual promises, covenants and agreements hereinafter set forth, the parties hereto do hereby agree as follows:

ARTICLE 1. Certain Definitions; Obligations of Builders Several; Additional Agreements. The term "Vendor", whenever used in this Agreement, means, before any assignment of any of their rights hereunder, the respective corporations named in Item 1 of Schedule A hereto and any successor or successors for the time being to their respective manufacturing properties and businesses, and, after any such assignment, both any assignee or assignees for the time being of such particular assigned rights as regards such rights, and also any assignor as regards any rights hereunder that are retained or excluded from any assignment. Whenever the term "Vendor" refers to a corporation named in Item 1 of Schedule A hereto, such term shall mean any or all such corporations, as the context may require. The term "Builder", whenever used in this Agreement, means, both before and after any such assignment, each of the respective corporations (as to the units of Equipment to be constructed by such corporation and sold hereunder) named in Item 1 of Schedule A hereto and any successor or successors for the time being to their respective manufacturing properties and businesses.

The rights and obligations of the Builders under this Agreement are several in accordance with their interests and not joint. Accordingly, whenever this Agreement, by the use of such designation as "the Vendor", "such Builder" or other similar term, confers a right or imposes an obligation upon any corporation named in Item 1 of Schedule A hereto or its successor, such right or obligation shall be

construed to accrue to or to be enforceable against only the specific corporation furnishing the units of Equipment giving rise to such right or obligation and its successors as herein provided.

Additional Agreements, if any, set forth in Schedule A hereto shall be deemed to be a part of this Agreement as fully as though set forth in full in this instrument.

ARTICLE 2. Construction and Sale. Pursuant to this Agreement, each Builder shall construct the units of the Equipment to be constructed by it as described in Schedule B hereto (such Equipment with respect to each Builder being hereinafter sometimes called its Equipment) and will sell and deliver to the Railroad, and the Railroad will purchase from such Builder and accept delivery of and pay for (as hereinafter provided), such Equipment, each unit of which shall be constructed in accordance with the specifications set forth therefor in Schedule B hereto and in accordance with such modifications thereof as may be agreed upon in writing between such Builder and the Railroad (which specifications and modifications, if any, are hereinafter called the Specifications). The design, quality and component parts of each unit of the Equipment shall conform, on the date of completion of manufacture of each thereof, to all Department of Transportation and Interstate Commerce Commission requirements and specifications and to all standards recommended by the Association of American Railroads reasonably interpreted as being applicable to equipment of the character of such units of the Equipment and each unit of the Equipment (except to the extent, if any, referred to in Schedule A hereto and/or in Article 8 hereof) will be new railroad equipment.

ARTICLE 3. Inspection and Delivery. Each Builder will deliver the units of its Equipment to the Railroad at the place or places specified in Schedule B hereto (or if Schedule B does not specify a place or places, at the place or places designated from time to time by the Railroad), freight charges, if any, prepaid, in accordance with the delivery schedule set forth in Schedule B hereto; provided, however, that no Builder shall have any obligation to deliver any unit of its Equipment hereunder at any time after the commencement of any proceedings specified in clause (c) or (d) of Article 16 hereof or if any event of default (as described in Article 16 hereof), or event which with lapse of time and/or demand would constitute such an event of default, shall have occurred.

Each Builder's obligation as to time of delivery is subject, however, to delays resulting from causes beyond the Builder's reasonable control, including but not limited to acts of God, acts of government such as embargoes, priorities and allocations, war or war conditions, riot or civil commotion, sabotage, strikes, differences with workmen, accidents, fire, flood, explosion, damage to plant, equipment or facilities, delays in receiving necessary materials or delays of carriers or subcontractors.

Notwithstanding the preceding provisions of this Article 3, any Equipment not delivered, accepted and settled for pursuant to Article 4 hereof on or before August 31, 1975, shall be excluded herefrom. If any unit or units of Equipment shall be excluded from this Agreement pursuant to the immediately preceding sentence, the Builder or Builders of such unit or units and the Railroad shall execute an agreement supplemental hereto limiting this Agreement to the units of Equipment not so excluded herefrom. If a Builder's failure to deliver Equipment so excluded from this Agreement resulted from one or more of the causes set forth in the immediately preceding paragraph, the Railroad shall nevertheless be obligated to accept such Equipment and pay the full purchase price therefor, determined as provided in this Agreement, if and when such Equipment shall be completed and delivered by such Builder, such payment to be in cash on the delivery of such Equipment, either directly or, in case the Railroad shall arrange therefor, by means of a conditional sale agreement, equipment trust or such other appropriate method of financing as the Railroad shall determine and as shall be reasonably acceptable to such Builder.

During construction, the Equipment shall be subject to inspection and approval by the authorized inspectors of the Railroad and each Builder shall grant to such authorized inspectors reasonable access to its plant. Each Builder agrees to inspect all materials used in the construction of the Equipment in accordance with the standard quality control practices of such Builder. Upon completion of each unit or of a number of units of the Equipment, such unit or units shall be presented to an inspector of the Railroad for inspection at the place specified for delivery of such unit or units, and if each such unit conforms to the Specifications, requirements and standards applicable thereto, such inspector or an authorized representative of the Railroad shall execute and deliver to such Builder a certificate of acceptance (hereinafter called the Certificate of Accep-

tance) stating that such unit or units have been inspected and accepted on behalf of the Railroad and are marked in accordance with Article 7 hereof; provided, however, that such Builder shall not thereby be relieved of its warranty referred to in Article 14 hereof.

On delivery of each such unit hereunder at the place specified for delivery, the Railroad will assume the responsibility and risk of, and shall not be released from its obligations hereunder in the event of, any damage to or the destruction or loss of such unit; provided, however, that such delivery shall not thereby relieve a Builder of its warranty referred to in Article 14 hereof.

ARTICLE 4. Purchase Price and Payment. The base price or prices per unit of the Equipment are set forth in Schedule B hereto. Such base price or prices are subject to such increase or decrease as may be agreed to by the Builder thereof and the Railroad. The term "Purchase Price" as used herein shall mean the base price or prices as so increased or decreased. If the aggregate Purchase Price of Equipment for which settlement has been made under this Agreement is in an amount not less than $50,250,000, the Railroad may, at its option, exclude from this Agreement any unit or units of Equipment for which settlement has not been made and the appropriate Builder or Builders of such unit or units (and any assignee of such Builder or Builders) shall, upon request of the Railroad enter into an agreement supplemental hereto evidencing such exclusion. The Railroad agrees to purchase any such unit or units so excluded from this Agreement and to pay the Builder in cash on the date such unit or units would otherwise have been settled for under this Agreement either directly, or, if the Builder and the Railroad shall mutually agree, by means of a conditional sale, equipment trust or other appropriate method of financing.

For the purpose of making settlement, the Equipment shall be divided into such number of groups (not more than three) of units of the Equipment, delivered to and accepted by the Railroad (each such group being hereinafter called a Group), as the respective Builder, the Railroad and the Vendor may agree to.

The Railroad hereby acknowledges itself to be indebted to the Vendor in the amount of, and hereby promises to pay in cash to the Vendor at such place as the Vendor

may designate, the Purchase Price of the Equipment, as follows:

(a) on each Closing Date (as hereinafter defined) the amount, if any, by which (x) the aggregate Purchase Price of all units of the Equipment for which settlement has theretofore and is then being made, as stated in the invoice or invoices presented in respect of such Closing Date (said invoiced prices being hereinafter called the Invoiced Purchase Prices), exceeds (y) the sum of $50,000,000 and any amount or amounts previously paid or payable with respect to the Invoiced Purchase Prices pursuant to this subparagraph (a); and

(b) in 15 consecutive equal (to the nearest multiple of $1,000, except for appropriate adjustment of the final instalment in case the amount payable pursuant to this subparagraph (b) shall not, when divided by 15, result in an amount ending in a multiple of $1,000) annual instalments, as hereinafter provided, an amount equal to the aggregate of the Invoiced Purchase Prices for all the Equipment less the amount paid or payable with respect thereto pursuant to subparagraph (a) of this paragraph (the aggregate of said instalments being hereinafter called the Conditional Sale Indebtedness).

In the event that on any Closing Date the final Purchase Price of any Group has not been finally determined, the invoice presented may be a preliminary invoice, subject to upward adjustment upon determination of the final Purchase Price, and a supplemental invoice may be presented by the Builder at least ten days prior to any subsequent Closing Date for settlement on such subsequent Closing Date for any increase in the Purchase Price; it being understood and agreed by the Builders that any preliminary invoice or invoices presented by the Builders in respect of any Group shall be in amount not in excess of the final Purchase Price of such Group.

The instalments of the Conditional Sale Indebtedness payable pursuant to subparagraph (b) of the third paragraph of this Article 4 shall be payable annually on May 15 in each year commencing on May 15, 1976, to and including May 15, 1990. The unpaid portion of the Conditional Sale Indebtedness shall bear interest from the respective Closing Dates on which such indebtedness was incurred at the rate of 9-3/4% per annum. Such interest shall be payable, to the extent accrued, on May 15 and November 15 in each year, commencing May 15, 1975.

The term "Closing Date" with respect to any Group of the Equipment shall mean March 3, 1975, and such other dates (after March 3, 1975, and prior to August 31, 1975,) not more than 10 business days following presentation by a Builder to the Railroad of the invoice and the Certificate or Certificates of Acceptance for such Group, as shall be fixed by the Railroad by written notice delivered to the Vendor at least six business days prior to the Closing Date designated therein; it being understood and agreed, however, that the aggregate Purchase Price of all Equipment settled for on Closing Dates prior to April 1, 1975, shall not exceed $26,000,000. The term "business days" as used herein means calendar days, excluding Saturdays, Sundays and any other day on which banking institutions in Chicago, Illinois, or New York, New York, are authorized to remain closed.

All interest under this Agreement shall be calculated on the basis of a 360-day year of twelve 30-day months.

The Railroad will pay, to the extent legally enforceable, interest at the rate of 10-3/4% per annum upon all amounts remaining unpaid after the same shall have become due and payable pursuant to the terms hereof, anything herein to the contrary notwithstanding.

All payments provided for in this Agreement shall be made in such coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts. Except as provided in Article 8 hereof, the Railroad shall not have the privilege of prepaying any instalment of its indebtedness hereunder prior to the date it becomes due.

In the event the Vendor, pursuant to Article 15 hereof, assigns the right to receive the payments herein provided to be made by the Railroad, the assignee thereof may request the Railroad to make and the Railroad shall make such payments to it at such address as shall be supplied to the Railroad by the assignee.

ARTICLE 5. Taxes. All payments to be made by the Railroad hereunder will be free of expense to the Vendor for collection or other charges and will be free of expense to the Vendor with respect to the amount of any local, state, federal or foreign taxes (other than net income, gross receipts [except gross receipts taxes in the nature of or in lieu of sales or use taxes], excess profits and similar taxes) or license fees, assessments, charges, fines or penal-

ties hereafter levied or imposed upon or in connection with or measured by, this Agreement or any sale, use, payment, shipment, delivery or transfer of title under the terms hereof (all such expenses, taxes, license fees, assessments, charges, fines and penalties being hereinafter called impositions), all of which impositions the Railroad assumes and agrees to pay on demand. The Railroad will also pay promptly all impositions which may be imposed upon the Equipment delivered to it or for the use or operation thereof or upon the earnings arising therefrom or upon the Vendor solely by reason of its ownership thereof and will keep at all times all and every part of the Equipment free and clear of all impositions which might in any way affect the title of the Vendor or result in a lien upon any part of the Equipment; provided, however, that the Railroad shall be under no obligation to pay any impositions of any kind so long as it is contesting in good faith and by appropriate legal proceedings such impositions and the nonpayment thereof does not, in the opinion of the Vendor, adversely affect the property or rights of the Vendor in or to the Equipment or otherwise under this Agreement. If any such impositions shall have been charged or levied against the Vendor directly and paid by the Vendor, the Railroad shall reimburse the Vendor upon presentation of an invoice therefor, and any amounts so paid by the Vendor shall be secured by and under this Agreement; provided, however, that the Railroad shall not be obligated to reimburse the Vendor for any impositions so paid unless the Vendor shall have been legally liable with respect thereto (as evidenced by an opinion of counsel for the Vendor) or unless the Railroad shall have approved the payment thereof.

ARTICLE 6. Title to the Equipment. The Vendor shall and hereby does retain the full legal title to and property in the Equipment until the Railroad shall have made all its payments under this Agreement and shall have kept and performed all its agreements herein contained, notwithstanding the delivery of the Equipment to and the possession and use thereof by the Railroad as provided in this Agreement. Any and all additions to the Equipment and any and all replacements of the Equipment and of parts thereof and additions thereto shall constitute accessions to the Equipment and shall be subject to all the terms and conditions of this Agreement and included in the term "Equipment" as used in this Agreement.

Except as otherwise specifically provided in Article 8 hereof, when and only when the full indebtedness in

respect of the Purchase Price of the Equipment, together with interest and all other payments as herein provided, shall have been paid, and all the Railroad's obligations herein contained shall have been performed by the Railroad, absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Railroad without further transfer or action on the part of the Vendor. However, the Vendor, if so requested by the Railroad at that time, will (a) execute a bill or bills of sale for the Equipment transferring its title thereto and property therein to the Railroad, or upon its order, free of all liens, security interests and other encumbrances created or retained hereby and deliver such bill or bills of sale to the Railroad at its address referred to in Article 21 hereof, (b) execute and deliver at the same place, for filing, recording or depositing in all necessary public offices, such instrument or instruments in writing as may be necessary or appropriate in order then to make clear upon the public records the title of the Railroad to the to the Equipment and (c) pay to the Railroad any money paid to the Vendor pursuant to Article 8 hereof and not theretofore applied as therein provided. The Railroad hereby waives and releases any and all rights, existing or that may be acquired, in or to the payment of any penalty, forfeit or damages for failure to execute and deliver such bill or bills of sale or instrument or instruments or to file any certificate of payment in compliance with any law or statute requiring the filing of the same, except for failure to execute and deliver such bill or bills of sale or instrument or instruments or to file such certificate within a reasonable time after written demand by the Railroad.

ARTICLE 7. Marking of the Equipment. The Railroad will cause each unit of the Equipment to be kept numbered with its identifying number as set forth in Schedule B hereto, or in the case of Equipment not there listed such identifying number as shall be set forth in any amendment or supplement hereto extending this Agreement to cover such Equipment, and will keep and maintain, plainly, distinctly, permanently and conspicuously marked on each side of each unit, in letters not less than one inch in height, the words "Ownership subject to a Security Interest Filed under the Interstate Commerce Act, Section 20c" or other appropriate markings approved by the Vendor, with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the Vendor's title to and property in the Equipment and its rights under this Agreement. The

Railroad will not place any such unit in operation or exercise any control or dominion over the same until such markings have been made thereon and will replace promptly any such markings which may be removed, defaced or destroyed. The Railroad will not change the number of any unit of the Equipment except in accordance with a statement of new number or numbers to be substituted therefor, which statement previously shall have been filed with the Vendor by the Railroad and filed, recorded and deposited by the Railroad in all public offices where this Agreement shall have been filed, recorded and deposited.

Except as provided in the immediately preceding paragraph, the Railroad will not allow the name of any person, association or corporation to be placed on any unit of the Equipment as a designation that might be interpreted as a claim of ownership; provided, however, that the Railroad may cause the Equipment to be lettered with the names or initials or other insignia of the Railroad or its affiliates.

ARTICLE 8. Casualty Occurrences. In the event that any unit of the Equipment shall be worn out, lost, stolen, destroyed, irreparably damaged or otherwise rendered permanently unfit for use from any cause whatsoever, or taken or requisitioned by condemnation or otherwise (such occurrences being hereinafter called Casualty Occurrences), the Railroad shall promptly (after it has knowledge of such Casualty Occurrence) and fully inform the Vendor in regard thereto. When the aggregate Casualty Value (as defined herein) of all units having suffered a Casualty Occurrence (exclusive of units having suffered a Casualty Occurrence with respect to which a payment shall have been made to the Vendor pursuant to this Article 8) hereunder shall exceed $250,000 (or such lesser amount as the Railroad may elect), the Railroad, within 90 days after the Railroad has knowledge of such event, shall file with the Vendor a certificate of an officer of the Railroad setting forth the Casualty Value of each unit of the Equipment having suffered a Casualty Occurrence and shall pay to the Vendor a sum equal to the aggregate Casualty Value as of the date of such payment of such unit or units of the Equipment having suffered a Casualty Occurrence, together with interest on such sum so being prepaid accrued to the date of such prepayment, but without premium, (the Railroad hereby agreeing to make such payment of accrued interest to the Vendor at the time it makes payment of such Casualty Value to the Vendor); provided, however, if and so long as no event of default

shall have occurred and be continuing hereunder, in lieu of making all or any portion of such payment to the Vendor, the Railroad may, on or before the expiration of such 90-day period, cause to be transferred to the Vendor a replacement unit or units of standard gauge railroad equipment (other than passenger or work equipment of types other than locomotives) and receive credit against the Casualty Value payment it would otherwise have been required to make in an amount equal to the value threof. The value of any unit or units of replacement equipment shall be equal to the cost thereof, if new, as specified in the invoice therefor delivered to the Vendor or, if not new, the lesser of (y) the fair market value thereof or (z) the original cost thereof less depreciation at a rate equal to 1/15th of such cost for each year in service, all as set forth in a certificate of an officer of the Railroad delivered to the Vendor at the time of such replacement. Any unit of replacement equipment shall have a remaining useful life (as evidenced by a certificate of an operating officer at the Railroad) at least as long as that which the Equipment being replaced would have had but for the Casualty Occurrence. In case any money is applied to prepay indebtedness, it shall be so applied, together with the interest due thereon, on the business day next following receipt by the Vendor of the appropriate payment, to reduce instalments of the aggregate Conditional Sale Indebtedness thereafter falling due in the inverse order of maturity thereof without premium.

The Casualty Value of each unit of the Equipment (other than a replacement unit) shall be deemed to be that amount which bears the same ratio to the original Purchase Price thereof (less, in the event that the Railroad shall have made any payment or payments under the provisions of subparagraph (a) of the third paragraph of Article 4 hereof, an amount which bears the same ratio to the aggregate of all such payments as the original Purchase Price of such unit bears to the original aggregate Purchase Price of all the Equipment) as the unpaid Conditional Sale Indebtedness (without giving effect to any prepayments then or theretofore made pursuant to this Article 8) as of the date payment is made with respect to such Casualty Occurrence bears to the original Conditional Sale Indebtedness. The Casualty Value of each replacement unit shall be deemed to be that amount which bears the same ratio to the portion of the cost thereof paid by the Vendor as the unpaid Conditional Sale Indebtedness ness (without giving effect to any prepayments then or theretofore made pursuant to this Article 8) as of the date payment

is made with respect to such Casualty Occurrence bears to the unpaid Conditional Sale Indebtedness (without giving effect to any such prepayments) as of the date of acquisition by the Vendor of such replacement unit.

The Railroad will cause any replacement unit or units to be marked as provided in Article 7 hereof. Any and all such replacements of Equipment shall constitute accessions to the Equipment and shall be subject to all appropriate terms and conditions of this Agreement as though part of the original Equipment delivered hereunder and shall be included in the term "Equipment" as used in this Agreement. Title to all such replacement units shall be free and clear of all liens and encumbrances except the liens permitted by the second paragraph of Article 12 hereof and shall be taken initially and shall remain in the name of the Vendor subject to the provisions hereof, and the Railroad shall execute, acknowledge, deliver, file, record or deposit all such documents and do any and all such acts as may be necessary to cause such replacement units to come under and be subject to this Agreement. All such replacement units shall be guaranteed and warranted in like manner as is customary at the time for similar equipment. Whenever the Railroad shall cause to be transferred to the Vendor a unit or units of replacement Equipment, the Railroad shall deliver to the Vendor an executed counterpart of an opinion of counsel covering the matters set forth in this paragraph.

In order to facilitate the sale or other disposition of any Equipment suffering a Casualty Occurrence, in respect of which the Railroad shall have paid to the Vendor the Casualty Value and/or shall have caused to be transferred to the Vendor a unit or units of replacement Equipment, the Vendor shall, upon request of the Railroad, execute and deliver to the Railroad or the Railroad's vendee, assignee or nominee, a bill of sale (without warranties) for such Equipment, and such other documents as may be required to release such Equipment from the terms and scope of this Agreement, in such form as may be reasonably requested by the Railroad.

The Railroad will at all times prior to the payment in full of the Conditional Sale Indebtedness together with interest thereon and all other payments required hereby, at its own expense, cause to be carried and maintained insurance in respect of the Equipment consisting of locomotives at the time subject hereto, and public liability insurance,

in amounts and against risks customarily insured against by railroad companies on similar equipment, and in any event in amounts and against risks comparable to those insured against by the Railroad on equipment owned by it; provided, however, that the Railroad may act as self-insurer in respect of losses and damage not exceeding $3,000,000 in respect of any single occurrence.

ARTICLE 9. Maintenance; Compliance with Laws and Rules. The Railroad will at all times maintain the Equipment or cause the Equipment to be maintained in good order and repair at its own expense.

During the term of this Agreement, the Railroad will at all times comply in all respects with all laws of the jurisdictions in which its operations involving the Equipment may extend, with the interchange rules of the Asociation of American Railroads and with all lawful rules of the Department of Transportation, Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Equipment, to the extent that such laws and rules affect the title, operation or use of the Equipment, and in the event that such laws or rules require any alteration, replacement or addition of any part on any unit of the Equipment, the Railroad will conform therewith, at its own expense; provided, however, that the Railroad may, in good faith, contest the validity or application of any such law or rule in any reasonable manner which does not, in the opinion of the Vendor, adversely affect the property or rights of the Vendor under this Agreement.

ARTICLE 10. Reports and Inspections. On or before March 31 in each year, commencing with the calendar year 1976, the Railroad shall furnish to the Vendor an accurate statement signed by an officer of the Railroad (a) setting forth as at the preceding December 31 the amount, description and numbers of all units of the Equipment that have suffered a Casualty Occurrence during the preceding calendar year (or since the date of this Agreement in the case of the first such statement) or that have been withdrawn from use pending repairs (other than running repairs) and such other information regarding the condition and state of repair of the Equipment as the Vendor may reasonably request and (b) stating that, in the case of all Equipment repaired or repainted during the period covered by such statement, the numbers and markings required by Article 7 hereof have

been preserved or replaced. During the term of this Agreement, the Vendor shall have the right, by its agents, to inspect the Equipment and the Railroad's records with respect thereto at such times and locations as the Vendor may reasonably request.

The Railroad shall furnish (i) as soon as available and in any event within 60 days after the end of each quarterly period, except the last, of each fiscal year, a balance sheet of the Railroad (as filed with the Interstate Commerce Commission (hereinafter called the ICC)) as at the end of such period, and an income statement of the Railroad as filed with the ICC for the period beginning on the first day of such fiscal year and ending on the date of such balance sheet, setting forth comparative figures for the corresponding period of the preceding fiscal year, all in reasonable detail and certified by the principal accounting officer of the Railroad, and (ii) as soon as available and in any event within 120 days after the end of each fiscal year, a copy of the Railroad's annual report as filed with the ICC, which shall include the balance sheet, income statement and statement of retained income of the Railroad certified by the principal accounting officer of the Railroad and which shall be accompanied by a letter from the independent accountants for Santa Fe Industries, Inc., the parent of the Railroad, stating that such financial statements, restated to generally accepted accounting principles, were included in the certified consolidated financial statement of Santa Fe Industries, Inc., and that such certified financial statements are not qualified with respect to the Railroad and, in the event a restatement to generally accepted accounting principles is required, such letter shall be accompanied by a schedule which shall describe such restatement in reasonable detail.

ARTICLE 11. Possession and Use. The Railroad, so long as an event of default shall not have occurred under this Agreement and be continuing, shall be entitled to the possession of the Equipment and the use thereof upon the lines of railroad owned or operated by it either alone or jointly with others and whether under lease or otherwise, or upon the lines of railroad owned or operated by any railroad company controlled by, or under common control with, the Railroad, or over which it has trackage rights, or upon connecting and other carriers in the usual interchange of traffic, from and after delivery of the Equipment by the Builder to the Railroad, but only upon and subject to all the terms and conditions of this Agreement.

ARTICLE 12. Prohibition Against Liens. The Railroad will pay or discharge any and all sums claimed by any party from, through or under the Railroad or its successors or assigns which, if unpaid, might become a lien, charge or security interest on the Equipment, or any unit thereof, equal or superior to the Vendor's title thereto or property therein; provided, however, that the Railroad shall be under no obligation to pay or discharge any such claim so long as it is contesting in good faith and by appropriate legal proceedings such claim and the nonpayment thereof does not, in the opinion of the Vendor, adversely affect the property or rights of the Vendor in or to the Equipment or otherwise under this Agreement. Any amounts paid by the Vendor in discharge of liens, charges or security interests upon the Equipment shall be secured by and under this Agreement.

This covenant will not be deemed breached by reason of liens for taxes, assessments or governmental charges or levies, in each case not due and delinquent, or undetermined or inchoate materialmen's, mechanics', workmen's, repairmen's or other like liens arising in the ordinary course of business and, in each case, not delinquent.

ARTICLE 13. Railroad's Indemnities. The Railroad agrees to indemnify, protect and hold harmless the Vendor from and against all losses, damages, injuries, liabilities, claims and demands whatsoever, regardless of the cause thereof, and expenses in connection therewith, including counsel fees, arising out of retention by the Vendor of title to the Equipment, the use and operation thereof by the Railroad during the period when title thereto remains in the Vendor or the transfer of title to the Equipment by the Vendor pursuant to any of the provisions of this Agreement, except, however, any losses, damages, injuries, liabilities, claims and demands whatsoever arising out of any tort, breach of warranty or failure to perform any covenant hereunder by any Builder. This covenant of indemnity shall continue in full force and effect notwithstanding the full payment of all sums due under this Agreement, or the satisfaction, discharge or termination of this Agreement in any manner whatsoever.

ARTICLE 14. Patent Indemnities; Builder's Warranty of Material and Workmanship. Except in cases of articles or materials specified by the Railroad and not manufactured by a Builder and in cases of designs, systems, processes, formulae or combinations specified by the Railroad and not

developed or purported to be developed by any Builder, each Builder agrees to indemnify, protect and hold harmless the Railroad from and against any and all liability, claims, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Railroad, its assigns or the users of its respective Equipment because of the use in or about the construction or operation of any of the Equipment of any design, system, process, formula, combination, article or material which infringes or is claimed to infringe on any patent or other right. The Railroad likewise will indemnify, protect and hold harmless the Vendor from and against any and all liability, claims, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Vendor because of the use in or about the construction or operation of any of the Equipment of any article or material specified by the Railroad and not manufactured by a Builder or of any design, system, process, formula or combination specified by the Railroad and not developed or purported to be developed by a Builder which infringes or is claimed to infringe on any patent or other right. Each Builder agrees to and hereby does, to the extent legally possible without impairing any claim, right or cause of action hereinafter referred to, assign, set over and deliver to the Railroad every claim, right and cause of action which such Builder has or hereafter shall have against the seller or sellers of any designs, systems, processes, formulae, combinations, articles or materials specified by the Railroad and purchased or otherwise acquired by such Builder for use in or about the construction or operation of any of the Equipment on the ground that any such design, system, process, formula, combination, article or material or operation thereof infringes or is claimed to infringe on any patent or other right. Each Builder further agrees to execute and deliver to the Railroad or the users of the Equipment all and every such further assurance as may be reasonably requested by the Railroad more fully to effectuate the assignment and delivery of every such claim, right and cause of action. Each Builder will give notice to the Railroad of any claim known to such Builder from which liability may be charged against the Railroad hereunder and the Railroad will give notice to the appropriate Builder of any claim known to the Railroad from which liability may be charged against any Builder hereunder. Such covenants of indemnity shall continue in full force and effect notwithstanding the full payment of all sums due under this Agreement, or the satisfaction,

discharge or termination of this Agreement in any manner whatsoever.

Each Builder's warranty of material and workmanship is set forth in Schedule A hereto.

ARTICLE 15. Assignments. The Railroad will not sell, assign, transfer or otherwise dispose of its rights under this Agreement or, except as provided in Article 11 hereof, transfer the right to possession of any unit of the Equipment without first obtaining the written consent of the Vendor. A sale, assignment, transfer or disposition to a railroad company organized under the laws of the United States of America or any of the states thereof which shall acquire all or substantially all the lines of railroad of the Railroad, and which, by execution of an appropriate instrument satisfactory to the Vendor, shall assume and agree to perform each of, and all, the obligations and covenants of the Railroad under this Agreement, shall not be deemed a breach of this covenant.

All or any of the rights, benefits and advantages of the Vendor under this Agreement, including the right to receive the payments herein provided to be made by the Railroad, may be assigned by the Vendor and reassigned by any assignee at any time or from time to time. No such assignment shall subject any assignee to, or relieve any Builder from, any of the obligations of such Builder to construct and deliver the Equipment in accordance with this Agreement or to respond to its respective warranties and indemnities contained or referred to in Article 14 hereof, or relieve the Railroad of any of its obligations to such Builders under Articles 2, 3, 4, 5, 13 and 14 hereof, Schedule A hereto and this Article 15 or of any other obligation which, according to its terms or context, is intended to survive an assignment.

Upon any such assignment either the assignor or the assignee shall give written notice to the Railroad, together with a counterpart or copy of such assignment, stating the identity and post office address of the assignee, and such assignee shall by virtue of such assignment acquire all the assignor's right, title and interest in and to the Equipment and this Agreement, or in and to a portion thereof, as the case may be, subject only to such reservations as may be contained in such assignment. From and after the receipt by the Railroadd of the notification of any such

assignment, all payments thereafter to be made by the Railroad under this Agreement shall, to the extent so assigned, be made to the assignee in such manner as it may direct.

The Railroad recognizes that it is the custom of railroad equipment manufacturers to assign conditional sale agreements and understands that the assignment of this Agreement, or of some of or all the rights of the Vendor hereunder, is contemplated. The Railroad expressly represents, for the purpose of assurance to any person, firm or corporation considering the acquisition of this Agreement or of all or any of the rights of the Vendor hereunder and for the purposes of inducing such acquisition, that in the event of such assignment by the Vendor as hereinbefore provided, the rights of such assignee to the entire unpaid indebtedness in respect of the Purchase Price or such part thereof as may be assigned, together with interest thereon, as well as any other rights hereunder which may be so assigned, shall not be subject to any defense, setoff, counterclaim or recoupment whatsoever arising out of any breach of any obligation of a Builder with respect to the Equipment or the manufacture, construction, delivery or warranty thereof, or with respect to any indemnity herein contained, nor subject to any defense, setoff, counterclaim or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to the Railroad by a Builder. Any and all such obligations, howsoever arising, shall be and remain enforceable by the Railroad against and only against the respective Builders.

The Railroad will (a) in connection with each settlement for the Equipment subsequent to such assignment, deliver to the assignee, at least five business days prior to the Closing Date for the Group fixed in the notice by the Railroad, all documents required by the terms of such assignment to be delivered to such assignee in connection with such settlement, in such number of counterparts or copies as may reasonably be requested, except for any opinion of counsel for such assignee, and (b) furnish to such assignee such number of counterparts of any other certificate or paper required by the Vendor as may reasonably be requested.

If this Agreement shall have been assigned by the Builders and the assignee shall not make payment to a Builder with respect to units of its Equipment as provided in the instrument making such assignment, such Builder will promptly notify the Railroad of such event and, if such

amount shall not have been previously paid by such assignee, the Railroad will, not later than 90 days after the date such payment was due, pay or cause to be paid to such Builder the aggregate unpaid Purchase Price of such units of its Equipment, together with interest from the day such payment was due to the date of payment by the Railroad at the highest prime rate of interest charged by any of the four New York City banks having the largest total assets, in effect on the date such payment was due.

ARTICLE 16. Defaults. In the event that any one or more of the following events of default shall occur and be continuing, to wit:

(a) the Railroad shall fail to pay in full any indebtedness in respect of the Purchase Price of the Equipment or any other sum payable by the Railroad as provided in this Agreement within ten days after payment thereof shall be due hereunder; or

(b) the Railroad shall, for more than 30 days after the Vendor shall have demanded in writing performance thereof, fail or refuse to comply with any covenant, agreement, term or provision of this Agreement, or of any agreement entered into concurrently herewith relating to the financing of the Equipment on its part to be kept or performed or to make provision satisfactory to the Vendor for such compliance; or

(c) a petition for reorganization under Section 77 of the Bankruptcy Act, as now constituted or as said Section 77 may be hereafter amended, shall be filed by or against the Railroad and, unless such petition shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Railroad under this Agreement shall not have been (and shall not continue to have been) duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees appointed (whether or not subject to ratification) in such proceedings in such manner that such obligations shall have the same status as obligations incurred by such trustee or trustees, within 30 days after such appointment, if any, or 60 days after such petition shall have been filed, whichever shall be earlier; or

(d) any other proceedings shall be commenced by or against the Railroad for any relief under any bankruptcy or insolvency law, or law relating to the relief of debtors, readjustments of indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which does not permit any readjustment of the indebtedness payable hereunder), and, unless such proceedings shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Railroad under this Agreement shall not have been (and shall not continue to have been) duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed (whether or not subject to ratification) for the Railroad or for its property in connection with any such proceedings in such manner that such obligations shall have the same status as obligations incurred by such trustee or trustees or receiver or receivers, within 30 days after such appointment, if any, or 60 days after such proceedings shall have been commenced, whichever shall be earlier; or

(e) the Railroad shall make or suffer any unauthorized assignment or transfer of this Agreement or any interest herein or any unauthorized transfer of the right to possession of any unit of the Equipment;

then at any time after the occurrence of such an event of default the Vendor may, upon written notice to the Railroad and upon compliance with any mandatory legal requirements then in force and applicable to such action by the Vendor, declare (hereinafter called a Declaration of Default) the entire indebtedness in respect of the Purchase Price of the Equipment, together with the interest thereon then accrued and unpaid, immediately due and payable, without further demand, and thereafter the aggregate of the unpaid balance of such indebtedness and interest shall bear interest from the date of such Declaration of Default at the rate per annum specified in Article 4 hereof as being applicable to amounts remaining unpaid after becoming due and payable, to the extent legally enforceable. The Vendor shall thereupon be entitled to recover judgment for the entire unpaid balance of the indebtedness in respect of the Purchase Price of the Equipment so payable, with interest as aforesaid, and to collect such judgment out of any property of

the Railroad wherever situated. The Railroad shall promptly notify the Vendor of any event which has come to its attention which constitutes, or which with the giving of notice and/or lapse of time could constitute, an event of default under this Agreement.

The Vendor may at its election waive any such event of default and its consequences and rescind and annul any Declaration of Default by notice to the Railroad in writing to that effect, and thereupon the respective rights of the parties shall be as they would have been if no such event of default had occurred and no Declaration of Default had been made. Notwithstanding the provisions of this paragraph, it is expressly understood and agreed by the Railroad that time is of the essence of this Agreement and that no such waiver, rescission or annulment shall extend to or affect any other or subsequent default or impair any rights or remedies consequent thereon.

ARTICLE 17. Remedies. At any time during the continuance of a Declaration of Default, the Vendor may, subject to compliance with any mandatory legal requirements then in force and applicable to the action to be taken by the Vendor, take or cause to be taken by its agent or agents immediate possession of the Equipment, or one or more of the units thereof, without liability to return to the Railroad any sums theretofore paid and free from all claims whatsoever, except as hereinafter in this Article 17 expressly provided, and may remove the same from possession and use of the Railroad or any other person and for such purpose may enter upon the Railroad's premises or any other premises where the Equipment may be located and may use and employ in connection with such removal any supplies, services and aids and any available trackage and other facilities or means of the Railroad.

In case the Vendor shall demand possession of the Equipment pursuant to this Agreement and shall reasonably designate a point or points upon the premises of the Railroad for the delivery of the Equipment to the Vendor, the Railroad shall, at its own expense, forthwith and in the usual manner (including, but not by way of limitation, giving prompt telegraphic and written notice to the Association of American Railroads and all railroads to which any part of the Equipment has been interchanged to return the Equipment so interchanged), cause (a) the Equipment to be moved to such point or points on its lines as shall

be designated by the Vendor and shall there deliver the Equipment or cause it to be delivered to the Vendor and (b) the Equipment to be moved to such interchange point or points of the Railroad as shall be designated by the Vendor upon any sale, lease or other disposal of all or any part of the Equipment by the Vendor. At the option of the Vendor, the Vendor may keep the Equipment on any of the lines or premises of the Railroad until the Vendor shall have leased, sold or otherwise disposed of the same, and for such purpose the Railroad agrees to furnish, without charge for rent or storage, the necessary facilities at any point or points selected by the Vendor reasonably convenient to the Railroad and, at the Railroad's risk, to permit inspection of the Equipment by the Vendor, the Vendor's representatives and prospective purchasers and users. This agreement to deliver the Equipment and furnish facilities as hereinbefore provided is of the essence of the agreement between the parties, and, upon application to any court of equity having jurisdiction in the premises, the Vendor shall be entitled to a decree against the Railroad requiring specific performance hereof. The Railroad hereby expressly waives any and all claims against the Vendor and its agent or agents for damages of whatever nature in connection with any retaking of any unit of the Equipment in any reasonable manner.

At any time during the continuance of a Declaration of Default, the Vendor (after retaking possession of the Equipment as hereinbefore in this Article 17 provided) may at its election and upon such notice as is hereinafter set forth retain the Equipment in satisfaction of the entire indebtedness in respect of the Purchase Price of the Equipment and make such disposition thereof as the Vendor shall deem fit. Written notice of the Vendor's election to retain the Equipment shall be given to the Railroad by telegram or registered mail, addressed as provided in Article 21 hereof, and to any other persons to whom the law may require notice, within 30 days after such Declaration of Default. In the event that the Vendor should elect to retain the Equipment and no objection is made thereto within the 30-day period described in the second proviso below, all the Railroad's rights in the Equipment shall thereupon terminate and all payments made by the Railroad may be retained by the Vendor as compensation for the use of the Equipment by the Railroad; <u>provided, however</u>, that if the Railroad, before the expiration of the 30-day period described in the proviso below,

should pay or cause to be paid to the Vendor the total unpaid balance of the indebtedness in respect of the Purchase Price of the Equipment, together with interest thereon accrued and unpaid and all other payments due under this Agreement as well as expenses of the Vendor in retaking possession of, removing and storing the Equipment and the Vendor's reasonable attorneys' fees, then in such event absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Railroad; provided, further, that if the Railroad or any other persons notified under the terms of this paragraph object in writing to the Vendor within 30 days from the receipt of notice of the Vendor's election to retain the Equipment, then the Vendor may not so retain the Equipment, but shall sell, lease or otherwise dispose of it or continue to hold it pending sale, lease or other disposition as hereinafter provided or as may otherwise be permitted by law. If the Vendor shall have given no notice to retain as hereinabove provided or notice of intention to dispose of the Equipment in any other manner, it shall be deemed to have elected to sell the Equipment in accordance with the provisions of this Article 17.

At any time during the continuance of a Declaration of Default, the Vendor, with or without retaking possession thereof, at its election and upon reasonable notice to the Railroad and to any other persons to whom the law may require notice of the time and place, may sell the Equipment, or any unit thereof, free from any and all claims of the Railroad or any other party claiming from, through or under the Railroad, at law or in equity, at public or private sale and with or without advertisement as the Vendor may determine; provided, however, that if, prior to such sale and prior to the making of a contract for such sale, the Railroad should tender full payment of the total unpaid balance of the indebtedness in respect of the Purchase Price of the Equipment, together with interest thereon accrued and unpaid and all other payments due under this Agreement as well as expenses of the Vendor in retaking possession of, removing, storing, holding and preparing the Equipment for, and otherwise arranging for, the sale and the Vendor's reasonable attorneys' fees, then in such event absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Railroad. The proceeds of such sale, less the attorneys' fees and any other expenses incurred by the Vendor in retaking possession of, removing, storing,

holding, preparing for sale and selling the Equipment, shall be credited on the amount due to the Vendor under the provisions of this Agreement.

Any sale hereunder may be held or conducted at such place or places and at such time or times as the Vendor may specify, in one lot and as an entirety or in separate lots and without the necessity of gathering at the place of sale the property to be sold, and in general in such manner as the Vendor may determine. The Vendor or the Railroad may bid for and become the purchaser of the Equipment, or any unit thereof, so offered for sale. The Railroad shall be given written notice of such sale not less than ten days prior thereto, by telegram or registered mail addressed to the Railroad as provided in Article 21 hereof. If such sale shall be a private sale (which shall be deemed to mean only a sale where an advertisement for bids has not been published in a newspaper of general circulation or a sale where less than 40 railroads have been solicited in writing to submit bids), it shall be subject to the right of the Railroad to purchase or provide a purchaser, within ten days after notice of the proposed sale price, at the same price offered by the intending purchaser or a better price. In the event that the Vendor shall be the purchaser of the Equipment, it shall not be accountable to the Railroad (except to the extent of surplus money received as hereinafter provided in this Article 17), and in payment of the purchase price therefor the Vendor shall be entitled to have credited on account thereof all or any part of the sums due to the Vendor from the Railroad hereunder. From and after the date of any such sale, the Railroad shall pay to the Vendor the per diem interchange for each unit of Equipment which shall not have been assembled, as hereinabove provided, by the date of such sale for each day from the date of such sale to the date of delivery to the Purchaser at such sale.

Each and every power and remedy hereby specifically given to the Vendor shall be in addition to every other power and remedy hereby specifically given or now or hereafter existing at law or in equity, and each and every power and remedy may be exercised from time to time and simultaneously and as often and in such order as may be deemed expedient by the Vendor. All such powers and remedies shall be cumulative, and the exercise of one shall not be deemed a waiver of the right to exercise any other or others. No delay or omission of the Vendor in the exercise of any such power or

remedy and no renewal or extension of any payments due hereunder shall impair any such power or remedy or shall be contrued to be a waiver of any default or an acquiescence therein. Any extension of time for payment hereunder or other indulgence duly granted to the Railroad shall not otherwise alter or affect the Vendor's rights or the Railroad's obligations hereunder. The Vendor's acceptance of any payment after it shall have become due hereunder shall not be deemed to alter or affect the Railroad's obligations or the Vendor's rights hereunder with respect to any subsequent payments or default therein.

If, after applying all sums of money realized by the Vendor under the remedies herein provided, there shall remain any amount due to it under the provisions of this Agreement, the Railroad shall pay the amount of such deficiency to the Vendor upon demand, together with interest from the date of such demand to the date of payment by the Railroad at the rate per annum set forth in Article 4 hereof applicable to amounts remaining unpaid after becoming due and payable. If the Railroad shall fail to pay such deficiency, the Vendor may bring suit therefor and shall be entitled to recover a judgment therefor against the Railroad. If, after applying as aforesaid all sums realized by the Vendor, there shall remain a surplus in the possession of the Vendor, such surplus shall be paid to the Railroad.

The Railroad will pay all reasonable expenses, including attorneys' fees, incurred by the Vendor in enforcing its remedies under the terms of this Agreement. In the event that the Vendor shall bring any suit to enforce any of its rights hereunder and shall be entitled to judgment, then in such suit the Vendor may recover reasonable expenses, including attorneys' fees, and the amount thereof shall be included in such judgment.

The foregoing provisions of this Article 17 are subject in all respects to all mandatory legal requirements at the time in force and applicable thereto.

Article 18. Applicable State Laws. Any provision of this Agreement prohibited by any applicable law of any jurisdiction (which is not overridden by applicable federal law) shall as to such jurisdiction be ineffective, without modifying the remaining provisions of this Agreement. Where, however, the conflicting provisions of any such applicable

law may be waived, they are hereby waived by the Railroad to the full extent permitted by law, it being the intention of the parties hereto that this Agreement shall be deemed to be a conditional sale and enforced as such.

Except as otherwise provided in this Agreement, the Railroad, to the full extent permitted by law, hereby waives all statutory or other legal requirements for any notice of any kind, notice of intention to take possession of or to sell or lease the Equipment, or any unit thereof, and any other requirements as to the time, place and terms of the sale or lease thereof, any other requirements with respect to the enforcement of the Vendor's rights under this Agreement and any and all rights of redemption.

ARTICLE 19. Recording. The Railroad will cause this Agreement, any assignments hereof and any amendments or supplements hereto or thereto to be filed and recorded with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act; and the Railroad will from time to time do and perform any other act and will execute, acknowledge, deliver, file, register, deposit and record any and all further instruments required by law or reasonably requested by the Vendor for the purpose of proper protection, to the satisfaction of counsel for the Vendor, of its title to the Equipment and its rights under this Agreement or for the purpose of carrying out the intention of this Agreement; and the Railroad will promptly furnish to the Vendor certificates or other evidence of such filing, registering, depositing and recording satisfactory to the Vendor.

ARTICLE 20. Payment of Expenses. The Railroad will pay all reasonable costs and expenses (other than the fees and expenses of counsel for any Builder) incident to this Agreement and the first assignment of this Agreement, and any instrument supplemental or related hereto or thereto, including all fees and expenses of counsel for the first assignee of this Agreement, and all reasonable costs and expenses in connection with the transfer by any party of interests acquired in such first assignment. If the first assignee is not an agent, such assignee may appoint a bank or trust company located in either the Borough of Manhattan, City and State of New York, or Chicago, Illinois, having capital and surplus aggregating at least $40,000,000 to act as agent on its behalf to hold all the right, title and interests of the Builders under this Agreement assigned

to it, all upon and subject to the terms and conditions provided for in a written agreement to be entered into by the first assignee and such agent in form and substance satisfactory to the first assignee and such agent; and the Railroad hereby agrees to pay all reasonable costs and expenses of such Agent. Prior to appointing such an agent, the assignee shall consult with the Railroad and shall give reasonable consideration to the recommendations of the Railroad as to the bank or trust company to be appointed.

ARTICLE 21. Notice. Any notice hereunder to any of the parties designated below shall be deemed to be properly served if delivered or mailed to it at its chief place of business at the following specified addresses:

(a) to the Railroad, at 80 East Jackson Street, Chicago, Illinois 60604, attention of R. W. Harper, Vice President-Finance.

(b) to a Builder, at its address specified in Item 1 of Schedule A hereto, and

(c) to any assignee of the Vendor or of the Railroad, at such address as may have been furnished in writing to each of the other parties hereto by such assignee,

or at such other address as may have been furnished in writing by such party to the other parties to this Agreement.

ARTICLE 22. Article Heading; Effect and Modification of Agreement. All article headings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

This Agreement, including the Schedules hereto, exclusively states the rights of the Vendor and the Railroad with respect to the Equipment and supersedes all other agreements, oral or written, with respect to the Equipment. No variation or modification of this Agreement and no waiver of any of its provisions or conditions shall be valid unless in writing and signed by duly authorized officers of the Vendor and the Railroad.

ARTICLE 23. Law Governing. The Railroad warrants that its chief place of business and its chief executive offices are located in the State of Illinois. The terms

of this Agreement and all rights and obligations hereunder shall be governed by the laws of the State of Illinois; provided, however, that the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act and such additional rights arising out of the filing, recording or deposit hereof, if any, and of any assignment hereof as shall be conferred by the laws of the several jurisdictions in which this Agreement or any assignment hereof shall be filed, recorded or deposited.

ARTICLE 24. Execution. This Agreement may be executed in any number of counterparts, and such counterparts together shall constitute but one and the same contract. It shall not be necessary that any counterpart be signed by all the parties so long as any counterpart be signed by the Railroad and one or more Builders. If this Agreement is assigned by any Builder, the original counterpart of this Agreement shall be deemed to be the counterpart executed by such Builder and delivered to such assignee. Each Builder shall be bound hereunder, notwithstanding the failure of any other Builder to execute and deliver this Agreement, or perform its obligations hereunder. Although this Agreement is dated, for convenience, as of the date first set forth above, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

IN WITNESS WHEREOF, the parties hereto, each pursuant to due corporate authority, have caused this instrument to be executed in their respective corporate names by their officers, thereunto duly authorized, and their respective corporate seals to be hereunto affixed, duly attested, all as of the date first above written.

GENERAL MOTORS CORPORATION
(Electro-Motive Division),

by

_____
Vice President

[Corporate Seal]

Attest:

_____
Assistant Secretary

FMC CORPORATION,

by

_____
Vice President

[Corporate Seal]

Attest:

_____
Assistant Secretary

PULLMAN INCORPORATED
(Pullman-Standard division),

by

_____
Vice President

[Corporate Seal]

Attest:

_____
Assistant Secretary

GENERAL ELECTRIC COMPANY,

by

_____
Manager-Marketing,
Locomotive Products Department

[Corporate Seal]

Attest:

_____
Attesting Secretary

PACCAR INC,

by

_____
Vice President & Treasurer

[Corporate Seal]

Attest:

_____
~~Assistant~~ Secretary

ACF INDUSTRIES, INCORPORATED,

by

_____
Vice President

[Corporate Seal]

Attest:

_____
Assistant Secretary

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY,

by

_____
Vice President-Finance

[Corporate Seal]

Attest:

_____
Assistant Secretary

STATE OF ILLINOIS,)
) ss.:
COUNTY OF COOK,)

On this day of 1975, before me personally appeared , to me personally known, who, being by me duly sworn, says that he is a Vice President of GENERAL MOTORS CORPORATION (Electro-Motive Division), that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

_____
Notary Public

[Notarial Seal]

My Commission Expires

STATE OF ILLINOIS,)
) ss.:
COUNTY OF COOK,)

On this day of 1975, before me personally appeared , to me personally known, who, being by me duly sworn, says that he is a Vice President of FMC CORPORATION, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

_____
Notary Public

[Notarial Seal]

My Commission Expires

STATE OF ILLINOIS,)
) ss.:
COUNTY OF COOK,)

On this day of 1975, before me personally appeared , to me personally known, who, being by me duly sworn, says that he is a Vice President of PULLMAN INCORPORATED (Pullman-Standard division), that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

_____
Notary Public

[Notarial Seal]

My Commission Expires

COMMONWEALTH OF PENNSYLVANIA,)
) ss.:
COUNTY OF ERIE,)

On this day of 1975, before me personally appeared , to me personally known, who, being by me duly sworn, says that he is Manager-Marketing, Locomotive Products Department, of GENERAL ELECTRIC COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

_____
Notary Public

[Notarial Seal]

My Commission Expires

STATE OF WASHINGTON,)
) ss.:
COUNTY OF KING,)

On this 3rd day of February 1975, before me personally appeared J. J. Jelley, to me personally known, who, being by me duly sworn, says that he is a Vice President of PACCAR INC, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Virginia K. Ogston
Notary Public

[Notarial Seal]

My Commission Expires 1/24/77

STATE OF NEW YORK,)
) ss.:
COUNTY OF NEW YORK,)

On this day of 1975, before me personally appeared , to me personally known, who, being by me duly sworn, says that he is a Vice President of ACF INDUSTRIES, INCORPORATED, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Notary Public

[Notarial Seal]

My Commission Expires

STATE OF ILLINOIS,)
) ss.:
COUNTY OF COOK,)

On this 31st day of January 1975, before me personally appeared R. W. HARPER, to me personally known, who, being by me duly sworn, says that he is a Vice President of THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

E. M. Arreguin
Notary Public

[Notarial Seal]

My Commission Expires
FEBRUARY 1, 1977

SCHEDULE A

Item 1: (a) General Motors Corporation (Electro-Motive Division), a Delaware corporation, La Grange, Illinois 60525.

(b) FMC Corporation, a Delaware corporation, 4700 Northwest Front Avenue, Portland, Oregon 97210.

(c) Pullman Incorporated (Pullman Standard division), a Delaware corporation, 200 South Michigan Avenue, Chicago, Illinois 60604.

(d) General Electric Company, a New York corporation, 2901 East Lake Road, Erie, Pennsylvania 16501.

(e) PACCAR Inc, a Delaware corporation, 1400 North 4th Street, Renton, Washington 98055.

(f) ACF Industries, Incorporated, a New Jersey corporation, 750 Third Avenue, New York, New York 10017.

Item 2: (a) (General Motors Corporation (Electro-Motive Division)): The Builder warrants that the Equipment will be built in accordance with the Specifications and the standards and requirements set forth in Article 2 of the Conditional Sale Agreement to which this Schedule is attached (hereinafter called the Agreement) and warrants that the Equipment will be free from defects in material (except as to specialties incorporated therein which were specified by the Railroad and not manufactured by the Builder) and workmanship under normal use and service; the Builder's obligations under this paragraph being limited to making good at its plant any part or parts of any unit of the Equipment which, within two years after the delivery of such unit to the Railroad or before such unit has been in scheduled service 250,000 miles (whichever event shall first occur), shall be returned to the Builder with transportation charges

prepaid and which the Builder's examination shall disclose to its satisfaction to have been thus defective.

This warranty of the Builder shall not apply (i) to any locomotive components which shall have been repaired or altered unless repaired or altered by the Builder or its authorized service representatives, if, in its judgment, such repairs or alterations affect the stability of a unit of the Equipment or (ii) to any unit of the Equipment which has been subject to misuse, negligence or accident.

This warranty is expressly in lieu of all other warranties expressed or implied, including any implied warranty of merchantability or fitness for a particular purpose, and of all other obligations or liabilities on the part of the Builder, except for its obligations under Articles 2, 3, 4 and 14 of the Agreement. The Builder neither assumes nor authorizes any person to assume for it any other liability in connection with the construction and delivery of the Equipment, except as aforesaid.

The Builder further agrees with the Railroad that neither the inspection as provided in Article 3 of the Agreement, nor any examination, nor the acceptance of any units of the Equipment as provided in Article 3 of the Agreement shall be deemed a waiver or a modification by the Railroad of any of its rights hereunder.

The Builder further agrees to hold harmless the Railroad from claims, costs and liability to the Builder's employees arising out of and in the course of their employment and while on the Railroad's premises or equipment except when traveling as revenue passengers on the Railroad's trains, and except that the Builder shall not be liable for the Railroad's sole negligence.

The Builder reserves the right to make change

in the design of, or add any improvements to, units of the Equipment at any time without incurring any obligation to make similar changes or additions in respect of units of Equipment previously delivered to the Railroad.

(b) (FMC Corporation): The Builder warrants that the Equipment will be built in accordance with the Specifications and the standards and conditions set forth in Article 2 of the Conditional Sale Agreement to which this Schedule is attached (hereinafter called the Agreement), and, except in cases of articles and materials specified by the Railroad and not manufactured by the Builder, warrants the Equipment to be free from defects in material and workmanship under normal use and service, the liability of the Builder under this warranty being limited, as the Railroad may elect: (i) to repair of the defect at the Builder's plant at Portland, Oregon; or (ii) to replacement of the defective part; or (iii) to the cost of repair or replacement according to the AAR Code of Rules Governing Condition of and Repairs to Freight and Passenger Cars with Interchange of Traffic.

The foregoing warranty of the Builder shall begin at the time of delivery of a unit of Equipment to the Railroad and terminate one year after such delivery. <u>This warranty is expressly in lieu of all other warranties expressed or implied on the part of the Builder</u>, except for the patent indemnification included in Article 14 of of the Agreement and except as hereinafter provided in this Schedule A, and the Builder neither assumes nor authorizes any person to assume for it any other warranty liability in connection with the construction and delivery of the Equipment.

The Builder further agrees that the Railroad shall have the right to repair the Equipment furnished by the Builder of its manufacture and that repair parts for such equipment may be made by, or for, the Railroad or purchased

in the open market, as the Railroad may determine; and it is agreed the Equipment may be repaired by other railroads no matter where the repair parts are obtained. This agreement includes the right on the part of the Railroad to purchase repair parts for such Equipment in anticipation of breakage, instead of waiting until the breakage actually occurs before ordering the repair parts.

The Builder's patent indemnification set forth in Article 14 of the Agreement does not apply to designs, systems, processes and formulae utilized by the Builder in or about the construction of the Equipment, or any unit thereof, as the result of specification by the Railroad, other than for patents or other rights controlled by the Builder; and the Railroad shall indemnify and save harmless the Builder and/or manufacturer and the Vendor for the use of any designs, systems, processes and formulae utilized by the Builder in or about the construction of the Equipment, or any unit thereof, as the result of specification by the Railroad, as against any patent infringement claims or damages as specified in said Article 14, other than for patents or other rights controlled by the Builder.

The Builder will hold harmless the Railroad from claims, costs and liability to Builder's employees arising out of and in the course of their employment and while on the Railroad's premises or equipment except when traveling as revenue passengers on the Railroad's trains.

(c) (Pullman Incorporated (Pullman-Standard division)): The Builder warrants that the Equipment will be built in accordance with the Specifications and the standards and requirements set forth in Article 2 of the Conditional Sale Agreement to which this Schedule is attached (hereinafter called the Agreement) and warrants the Equipment will be free from defects in material (except as to specialties incorporated therein specified by the Railroad

and not manufactured by the Builder) and workmanship and design under normal use and service, the Builder's obligation under this Item 2 being limited to making good at its plant any part or parts of any unit of Equipment which shall, within one year after the delivery of such unit of Equipment to the Railroad, be returned to the Builder with transportation charges prepaid and which examination by the Builder shall disclose to its satisfaction to have been thus defective.

The foregoing warranty is expressly in lieu of all other warranties, expressed or implied, including any implied merchantability or fitness for a particular purpose, and of all other obligations or liabilities on the part of the Builder, except for its obligations under Articles 2, 3, 4 and 14 of the Agreement, and the Builder neither assumes nor authorizes any person to assume for it any other liability in connection with the construction of the Equipment and delivery of the Equipment, except as aforesaid. It is further understood and agreed that in no event shall the Builder be liable for indirect or consequential damages of any kind.

The Builder further agrees with the Railroad that neither the inspection provided in Article 3 of the Agreement, nor any examination, nor the acceptance of any units of the Equipment as provided in said Article 3 shall be deemed a waiver or a modification by the Railroad of any of its rights under this Item 2.

(d) (General Electric Company): The Builder warrants that the Equipment will be built in accordance with the Specifications and the standards and requirements referred to in Article 2 of the Conditional Sale Agreement to which this Schedule is attached (hereinafter called the Agreement) and warrants the equipment will be free from defects in material (except as to specialties incorporated therein that are not of the Builder's own specification or design) and workmanship under normal use

and service; the Builder's obligations under this paragraph being limited to making good at its plant any part or parts of any unit of the Equipment which, within one year after the delivery of such unit to the Railroad, shall be returned to the Builder with transportation charges prepaid and which the Builder's examination shall disclose to its satisfaction to have been thus defective.

This warranty of the Builder shall not apply (i) to any locomotive components which shall have been repaired or altered, unless repaired or altered by the Builder or its authorized service representatives, if, in its judgment, such repairs or alterations affect the stability of a unit of the Equipment or (ii) to any unit of the Equipment which has been subject to misuse, negligence or accident.

THIS WARRANTY IS EXPRESSLY IN LIEU OF ALL OTHER WARRANTIES EXPRESSED OR IMPLIED, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND OF ALL OTHER OBLIGATIONS OR LIABILITIES ON THE PART OF THE BUILDER, EXCEPT FOR ITS OBLIGATIONS UNDER THE AGREEMENT. THE BUILDER NEITHER ASSUMES NOR AUTHORIZES ANY PERSON TO ASSUME FOR IT ANY OTHER LIABILITY IN CONNECTION WITH THE CONSTRUCTION AND DELIVERY OF THE EQUIPMENT, EXCEPT AS AFORESAID.

In no event shall the Builder be liable for special or consequential damages. The Builder's liability on any claim of any kind including negligence, or for any loss or damage arising out of, connected with, or resulting from, the Agreement, or from the performance or breach thereof, or from the manufacture, sale, delivery, resale, repair or use of any unit of the Equipment covered by, or furnished under, the Agreement, shall in no case exceed the Purchase Price of such unit of the Equipment involved in the claim, and upon the expiration of the warranty period specified above all such liability shall terminate. The Builder shall have no liability

for any unit of the Equipment or part thereof which becomes defective by reason of improper storage or application, misuse, negligence, accident or improper operation, maintenance, repairs or alterations on the part of the Railroad or any third party other than the Builder. The foregoing warranty shall constitute the sole remedy of the Railroad and the sole liability of the Builder.

It is understood that the Builder has the right to make changes in the design of, or to add improvements to units of the Equipment at any time without incurring any obligations to install, at the Builder's expense, the same or other locomotives sold by Builder.

The Builder further agrees with the Railroad that neither the inspection as provided in the Agreement, nor any examination, nor the acceptance of any units of the Equipment as provided in the Agreement shall be deemed a waiver or a modification by the Railroad of any of its rights under this Item 2.

(e) (PACCAR Inc): The Builder warrants that the Equipment will be built in accordance with the requirements, specifications and standards set forth in Article 2 of the Conditional Sale Agreement to which this Schedule is attached (hereinafter called the Agreement) and, except in cases of articles and materials specified by the Railroad and not manufactured by the Builder, warrants the Equipment to be free from defects in material and workmanship under normal use and service, the liability of the Builder under this warranty being limited, as the Railroad may elect: (i) to repair of the defects at the Builder's plant; or (ii) to replacement of a defective part; or (iii) to the cost of repair or replacement according to the AAR Code of Rules Governinig Condition of and Repairs to Freight and Passenger Cars with Interchange of Traffic. The Builder shall be given reasonable opportunity to verify any claim of defects in workmanship or materials.

The foregoing warranty of the Builder shall begin at the time of delivery of a unit of the Equipment to the Railroad and terminate two years after such delivery. THE BUILDER MAKES NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. The Railroad's right under the foregoing warranty shall be its sole and exclusive remedy and the Builder will have no liability for lost profit or for indirect, incidental, consequential or commercial losses. This warranty is expressly in lieu of all other warranties express or implied on the part of the Builder, except for the patent indemnification included in Article 14 of this Agreement. The Builder neither assumes nor authorizes any person to assume for it any other warranty liability in connection with the construction and delivery of the Equipment.

The Builder further agrees with the Railroad that neither the inspection as provided in Article 3 of the Agreement nor any examination nor the acceptance of any units of the Equipment as provided in said Article 3 shall be deemed a waiver or a modification by the Railroad of any of its rights under this Item 2.

The Builder will hold harmless the Railroad from claims, costs and liability to the Builder's employees arising out of and in the course of their employment and while on the Railroad's premises or equipment except when traveling as revenue passengers on the Railroad's trains.

(f) (ACF Industries, Incorporated): The Builder warrants that the Equipment will be built in accordance with the requirements, specifications and standards set forth in Article 2 of the Conditional Sale Agreement to which this Schedule is attached (hereinafter called this Agreement) and warrants the Equipment will be free from defects in material (except as to specialties incorporated therein which were specified or supplied by the Railroad and not manufactured by the Builder) and

workmanship under normal use and service, the Builder's obligation under this Item 2 being limited to making good at its factory any part or parts of any unit of the Equipment which shall be returned to the Builder with transportation charges prepaid, within one year after the delivery of such unit to the Railroad, and which the Builder's examination shall disclose to its satisfaction to have been thus defective. The foregoing warranty of the Builder is expressly in lieu of all other warranties, express or implied, including any implied warranty of merchantability or fitness for a particular purpose, and of all other obligations or liabilities under Articles 2, 3, 4 and 14 of the Agreement, and the Builder neither assumes nor authorizes any person to assume for it any other liability in connection with the construction and delivery of the Equipment except as aforesaid.

The Builder further agrees that neither the inspection as provided in Article 3 of this Agreement nor any examination nor the acceptance of any units of the Equipment as provided in said Article 3 shall be deemed a waiver or a modification by the Owner-Trustee of any of its rights under this Item 2.

SCHEDULE B

Builder	Type	Quantity	Builder's Specifications	Builder's Plant	Railroad's Numbers (inclusive)	Unit Base Price	Total Base Price	Time and Place of Delivery
(a) General Motors Corporation (Electro-Motive Divison)	2300 h.p. GP-39-2 locomotive	29	8075	McCook, Illinois	3626 7 3654 5	$355,200	$10,300,800	Prior to April 30, 1975, at Builder's Plant
(b) FMC Corporation	60' 9" 100-ton box car with roller bearings AAR Mechanical Designation XM	400	Job 17620	Portland, Oregon	611000-611399	36,000	14,400,000	March-April, 1975, at Builder's Plant
(c) Pullman Incorporated (Pullman-Standard division)	60' 9" 100-ton box car with roller bearings; AAR Mechanical Designation XL	216	Lot Number 9783	Bessemer, Alabama	611400-611615	33,100	7,149,600	April-May, 1975, at Bessemer, Ala.

SCHEDULE B (Cont'd)

Builder	Type	Quantity	Builder's Specifications	Builder's Plant	Railroad's Numbers (inclusive)	Unit Base Price	Total Base Price	Time and Place of Delivery
(d) General Electric Company	U-36-C, 3600 h.p. locomotive; AAR Mechanical Designation C-C	6	3690E	Erie, Pennsylvania	8794-8799	$436,300	$ 2,617,800	Prior to March 1, 1975, at Erie, Pa.
(e) PACCAR Inc	52' 6", 70-ton insulated box car with roller bearing trucks, cushioned underframe, dual Air'Pak load dividers, 16' doors;	100	PC-339, as revised	Renton, Washington	522800-522899	37,100	3,710,000	Prior to March 1, 1975, at Builder's Plant
(f) ACF Industries, Incorporated	4600 cu. ft., 100-ton covered hopper car with roller bearing trucks and interior coating	400	11-01312, dated November 11, 1974	Huntington, West Virginia	314800-315199	30,000	12,000,000	February-March, 1975, at Russell, Ky.

7822
RECORDATION NO. _____ Filed & Recorded
FEB 6 1975 10 55 AM
INTERSTATE COMMERCE COMMISSION

CONDITIONAL SALE AGREEMENT

Dated as of January 15, 1975

Among

GENERAL MOTORS CORPORATION
(Electro-Motive Division),
FMC CORPORATION,
PULLMAN INCORPORATED (Pullman Standard division)
GENERAL ELECTRIC COMPANY,
PACCAR INC,
ACF INDUSTRIES, INCORPORATED

and

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY

CONDITIONAL SALE AGREEMENT dated as of January 15, 1975, among each of the corporations named in Item 1 of Schedule A hereto and THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, a Delaware corporation (hereinafter called the Railroad).

WHEREAS each of the corporations named in Item 1 of Schedule A hereto severally have agreed to construct, sell and deliver to the Railroad, and the Railroad has agreed to purchase, the equipment described in Schedule B hereto (hereinafter called the Equipment);

NOW, THEREFORE, in consideration of the mutual promises, covenants and agreements hereinafter set forth, the parties hereto do hereby agree as follows:

ARTICLE 1. Certain Definitions; Obligations of Builders Several; Additional Agreements. The term "Vendor", whenever used in this Agreement, means, before any assignment of any of their rights hereunder, the respective corporations named in Item 1 of Schedule A hereto and any successor or successors for the time being to their respective manufacturing properties and businesses, and, after any such assignment, both any assignee or assignees for the time being of such particular assigned rights as regards such rights, and also any assignor as regards any rights hereunder that are retained or excluded from any assignment. Whenever the term "Vendor" refers to a corporation named in Item 1 of Schedule A hereto, such term shall mean any or all such corporations, as the context may require. The term "Builder", whenever used in this Agreement, means, both before and after any such assignment, each of the respective corporations (as to the units of Equipment to be constructed by such corporation and sold hereunder) named in Item 1 of Schedule A hereto and any successor or successors for the time being to their respective manufacturing properties and businesses.

The rights and obligations of the Builders under this Agreement are several in accordance with their interests and not joint. Accordingly, whenever this Agreement, by the use of such designation as "the Vendor", "such Builder" or other similar term, confers a right or imposes an obligation upon any corporation named in Item 1 of Schedule A hereto or its successor, such right or obligation shall be

construed to accrue to or to be enforceable against only the specific corporation furnishing the units of Equipment giving rise to such right or obligation and its successors as herein provided.

Additional Agreements, if any, set forth in Schedule A hereto shall be deemed to be a part of this Agreement as fully as though set forth in full in this instrument.

ARTICLE 2. Construction and Sale. Pursuant to this Agreement, each Builder shall construct the units of the Equipment to be constructed by it as described in Schedule B hereto (such Equipment with respect to each Builder being hereinafter sometimes called its Equipment) and will sell and deliver to the Railroad, and the Railroad will purchase from such Builder and accept delivery of and pay for (as hereinafter provided), such Equipment, each unit of which shall be constructed in accordance with the specifications set forth therefor in Schedule B hereto and in accordance with such modifications thereof as may be agreed upon in writing between such Builder and the Railroad (which specifications and modifications, if any, are hereinafter called the Specifications). The design, quality and component parts of each unit of the Equipment shall conform, on the date of completion of manufacture of each thereof, to all Department of Transportation and Interstate Commerce Commission requirements and specifications and to all standards recommended by the Association of American Railroads reasonably interpreted as being applicable to equipment of the character of such units of the Equipment and each unit of the Equipment (except to the extent, if any, referred to in Schedule A hereto and/or in Article 8 hereof) will be new railroad equipment.

ARTICLE 3. Inspection and Delivery. Each Builder will deliver the units of its Equipment to the Railroad at the place or places specified in Schedule B hereto (or if Schedule B does not specify a place or places, at the place or places designated from time to time by the Railroad), freight charges, if any, prepaid, in accordance with the delivery schedule set forth in Schedule B hereto; provided, however, that no Builder shall have any obligation to deliver any unit of its Equipment hereunder at any time after the commencement of any proceedings specified in clause (c) or (d) of Article 16 hereof or if any event of default (as described in Article 16 hereof), or event which with lapse of time and/or demand would constitute such an event of default, shall have occurred.

Each Builder's obligation as to time of delivery is subject, however, to delays resulting from causes beyond the Builder's reasonable control, including but not limited to acts of God, acts of government such as embargoes, priorities and allocations, war or war conditions, riot or civil commotion, sabotage, strikes, differences with workmen, accidents, fire, flood, explosion, damage to plant, equipment or facilities, delays in receiving necessary materials or delays of carriers or subcontractors.

Notwithstanding the preceding provisions of this Article 3, any Equipment not delivered, accepted and settled for pursuant to Article 4 hereof on or before August 31, 1975, shall be excluded herefrom. If any unit or units of Equipment shall be excluded from this Agreement pursuant to the immediately preceding sentence, the Builder or Builders of such unit or units and the Railroad shall execute an agreement supplemental hereto limiting this Agreement to the units of Equipment not so excluded herefrom. If a Builder's failure to deliver Equipment so excluded from this Agreement resulted from one or more of the causes set forth in the immediately preceding paragraph, the Railroad shall nevertheless be obligated to accept such Equipment and pay the full purchase price therefor, determined as provided in this Agreement, if and when such Equipment shall be completed and delivered by such Builder, such payment to be in cash on the delivery of such Equipment, either directly or, in case the Railroad shall arrange therefor, by means of a conditional sale agreement, equipment trust or such other appropriate method of financing as the Railroad shall determine and as shall be reasonably acceptable to such Builder.

During construction, the Equipment shall be subject to inspection and approval by the authorized inspectors of the Railroad and each Builder shall grant to such authorized inspectors reasonable access to its plant. Each Builder agrees to inspect all materials used in the construction of the Equipment in accordance with the standard quality control practices of such Builder. Upon completion of each unit or of a number of units of the Equipment, such unit or units shall be presented to an inspector of the Railroad for inspection at the place specified for delivery of such unit or units, and if each such unit conforms to the Specifications, requirements and standards applicable thereto, such inspector or an authorized representative of the Railroad shall execute and deliver to such Builder a certificate of acceptance (hereinafter called the Certificate of Accep-

tance) stating that such unit or units have been inspected and accepted on behalf of the Railroad and are marked in accordance with Article 7 hereof; provided, however, that such Builder shall not thereby be relieved of its warranty referred to in Article 14 hereof.

On delivery of each such unit hereunder at the place specified for delivery, the Railroad will assume the responsibility and risk of, and shall not be released from its obligations hereunder in the event of, any damage to or the destruction or loss of such unit; provided, however, that such delivery shall not thereby relieve a Builder of its warranty referred to in Article 14 hereof.

ARTICLE 4. Purchase Price and Payment. The base price or prices per unit of the Equipment are set forth in Schedule B hereto. Such base price or prices are subject to such increase or decrease as may be agreed to by the Builder thereof and the Railroad. The term "Purchase Price" as used herein shall mean the base price or prices as so increased or decreased. If the aggregate Purchase Price of Equipment for which settlement has been made under this Agreement is in an amount not less than $50,250,000, the Railroad may, at its option, exclude from this Agreement any unit or units of Equipment for which settlement has not been made and the appropriate Builder or Builders of such unit or units (and any assignee of such Builder or Builders) shall, upon request of the Railroad enter into an agreement supplemental hereto evidencing such exclusion. The Railroad agrees to purchase any such unit or units so excluded from this Agreement and to pay the Builder in cash on the date such unit or units would otherwise have been settled for under this Agreement either directly, or, if the Builder and the Railroad shall mutually agree, by means of a conditional sale, equipment trust or other appropriate method of financing.

For the purpose of making settlement, the Equipment shall be divided into such number of groups (not more than three) of units of the Equipment, delivered to and accepted by the Railroad (each such group being hereinafter called a Group), as the respective Builder, the Railroad and the Vendor may agree to.

The Railroad hereby acknowledges itself to be indebted to the Vendor in the amount of, and hereby promises to pay in cash to the Vendor at such place as the Vendor

may designate, the Purchase Price of the Equipment, as follows:

(a) on each Closing Date (as hereinafter defined) the amount, if any, by which (x) the aggregate Purchase Price of all units of the Equipment for which settlement has theretofore and is then being made, as stated in the invoice or invoices presented in respect of such Closing Date (said invoiced prices being hereinafter called the Invoiced Purchase Prices), exceeds (y) the sum of $50,000,000 and any amount or amounts previously paid or payable with respect to the Invoiced Purchase Prices pursuant to this subparagraph (a); and

(b) in 15 consecutive equal (to the nearest multiple of $1,000, except for appropriate adjustment of the final instalment in case the amount payable pursuant to this subparagraph (b) shall not, when divided by 15, result in an amount ending in a multiple of $1,000) annual instalments, as hereinafter provided, an amount equal to the aggregate of the Invoiced Purchase Prices for all the Equipment less the amount paid or payable with respect thereto pursuant to subparagraph (a) of this paragraph (the aggregate of said instalments being hereinafter called the Conditional Sale Indebtedness).

In the event that on any Closing Date the final Purchase Price of any Group has not been finally determined, the invoice presented may be a preliminary invoice, subject to upward adjustment upon determination of the final Purchase Price, and a supplemental invoice may be presented by the Builder at least ten days prior to any subsequent Closing Date for settlement on such subsequent Closing Date for any increase in the Purchase Price; it being understood and agreed by the Builders that any preliminary invoice or invoices presented by the Builders in respect of any Group shall be in amount not in excess of the final Purchase Price of such Group.

The instalments of the Conditional Sale Indebtedness payable pursuant to subparagraph (b) of the third paragraph of this Article 4 shall be payable annually on May 15 in each year commencing on May 15, 1976, to and including May 15, 1990. The unpaid portion of the Conditional Sale Indebtedness shall bear interest from the respective Closing Dates on which such indebtedness was incurred at the rate of 9-3/4% per annum. Such interest shall be payable, to the extent accrued, on May 15 and November 15 in each year, commencing May 15, 1975.

The term "Closing Date" with respect to any Group of the Equipment shall mean March 3, 1975, and such other dates (after March 3, 1975, and prior to August 31, 1975,) not more than 10 business days following presentation by a Builder to the Railroad of the invoice and the Certificate or Certificates of Acceptance for such Group, as shall be fixed by the Railroad by written notice delivered to the Vendor at least six business days prior to the Closing Date designated therein; it being understood and agreed, however, that the aggregate Purchase Price of all Equipment settled for on Closing Dates prior to April 1, 1975, shall not exceed $26,000,000. The term "business days" as used herein means calendar days, excluding Saturdays, Sundays and any other day on which banking institutions in Chicago, Illinois, or New York, New York, are authorized to remain closed.

All interest under this Agreement shall be calculated on the basis of a 360-day year of twelve 30-day months.

The Railroad will pay, to the extent legally enforceable, interest at the rate of 10-3/4% per annum upon all amounts remaining unpaid after the same shall have become due and payable pursuant to the terms hereof, anything herein to the contrary notwithstanding.

All payments provided for in this Agreement shall be made in such coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts. Except as provided in Article 8 hereof, the Railroad shall not have the privilege of prepaying any instalment of its indebtedness hereunder prior to the date it becomes due.

In the event the Vendor, pursuant to Article 15 hereof, assigns the right to receive the payments herein provided to be made by the Railroad, the assignee thereof may request the Railroad to make and the Railroad shall make such payments to it at such address as shall be supplied to the Railroad by the assignee.

ARTICLE 5. Taxes. All payments to be made by the Railroad hereunder will be free of expense to the Vendor for collection or other charges and will be free of expense to the Vendor with respect to the amount of any local, state, federal or foreign taxes (other than net income, gross receipts [except gross receipts taxes in the nature of or in lieu of sales or use taxes], excess profits and similar taxes) or license fees, assessments, charges, fines or penal-

ties hereafter levied or imposed upon or in connection with or measured by, this Agreement or any sale, use, payment, shipment, delivery or transfer of title under the terms hereof (all such expenses, taxes, license fees, assessments, charges, fines and penalties being hereinafter called impositions), all of which impositions the Railroad assumes and agrees to pay on demand. The Railroad will also pay promptly all impositions which may be imposed upon the Equipment delivered to it or for the use or operation thereof or upon the earnings arising therefrom or upon the Vendor solely by reason of its ownership thereof and will keep at all times all and every part of the Equipment free and clear of all impositions which might in any way affect the title of the Vendor or result in a lien upon any part of the Equipment; provided, however, that the Railroad shall be under no obligation to pay any impositions of any kind so long as it is contesting in good faith and by appropriate legal proceedings such impositions and the nonpayment thereof does not, in the opinion of the Vendor, adversely affect the property or rights of the Vendor in or to the Equipment or otherwise under this Agreement. If any such impositions shall have been charged or levied against the Vendor directly and paid by the Vendor, the Railroad shall reimburse the Vendor upon presentation of an invoice therefor, and any amounts so paid by the Vendor shall be secured by and under this Agreement; provided, however, that the Railroad shall not be obligated to reimburse the Vendor for any impositions so paid unless the Vendor shall have been legally liable with respect thereto (as evidenced by an opinion of counsel for the Vendor) or unless the Railroad shall have approved the payment thereof.

ARTICLE 6. Title to the Equipment. The Vendor shall and hereby does retain the full legal title to and property in the Equipment until the Railroad shall have made all its payments under this Agreement and shall have kept and performed all its agreements herein contained, notwithstanding the delivery of the Equipment to and the possession and use thereof by the Railroad as provided in this Agreement. Any and all additions to the Equipment and any and all replacements of the Equipment and of parts thereof and additions thereto shall constitute accessions to the Equipment and shall be subject to all the terms and conditions of this Agreement and included in the term "Equipment" as used in this Agreement.

Except as otherwise specifically provided in Article 8 hereof, when and only when the full indebtedness in

respect of the Purchase Price of the Equipment, together with interest and all other payments as herein provided, shall have been paid, and all the Railroad's obligations herein contained shall have been performed by the Railroad, absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Railroad without further transfer or action on the part of the Vendor. However, the Vendor, if so requested by the Railroad at that time, will (a) execute a bill or bills of sale for the Equipment transferring its title thereto and property therein to the Railroad, or upon its order, free of all liens, security interests and other encumbrances created or retained hereby and deliver such bill or bills of sale to the Railroad at its address referred to in Article 21 hereof, (b) execute and deliver at the same place, for filing, recording or depositing in all necessary public offices, such instrument or instruments in writing as may be necessary or appropriate in order then to make clear upon the public records the title of the Railroad to the to the Equipment and (c) pay to the Railroad any money paid to the Vendor pursuant to Article 8 hereof and not theretofore applied as therein provided. The Railroad hereby waives and releases any and all rights, existing or that may be acquired, in or to the payment of any penalty, forfeit or damages for failure to execute and deliver such bill or bills of sale or instrument or instruments or to file any certificate of payment in compliance with any law or statute requiring the filing of the same, except for failure to execute and deliver such bill or bills of sale or instrument or instruments or to file such certificate within a reasonable time after written demand by the Railroad.

ARTICLE 7. Marking of the Equipment. The Railroad will cause each unit of the Equipment to be kept numbered with its identifying number as set forth in Schedule B hereto, or in the case of Equipment not there listed such identifying number as shall be set forth in any amendment or supplement hereto extending this Agreement to cover such Equipment, and will keep and maintain, plainly, distinctly, permanently and conspicuously marked on each side of each unit, in letters not less than one inch in height, the words "Ownership subject to a Security Interest Filed under the Interstate Commerce Act, Section 20c" or other appropriate markings approved by the Vendor, with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the Vendor's title to and property in the Equipment and its rights under this Agreement. The

Railroad will not place any such unit in operation or exercise any control or dominion over the same until such markings have been made thereon and will replace promptly any such markings which may be removed, defaced or destroyed. The Railroad will not change the number of any unit of the Equipment except in accordance with a statement of new number or numbers to be substituted therefor, which statement previously shall have been filed with the Vendor by the Railroad and filed, recorded and deposited by the Railroad in all public offices where this Agreement shall have been filed, recorded and deposited.

Except as provided in the immediately preceding paragraph, the Railroad will not allow the name of any person, association or corporation to be placed on any unit of the Equipment as a designation that might be interpreted as a claim of ownership; provided, however, that the Railroad may cause the Equipment to be lettered with the names or initials or other insignia of the Railroad or its affiliates.

ARTICLE 8. Casualty Occurrences. In the event that any unit of the Equipment shall be worn out, lost, stolen, destroyed, irreparably damaged or otherwise rendered permanently unfit for use from any cause whatsoever, or taken or requisitioned by condemnation or otherwise (such occurrences being hereinafter called Casualty Occurrences), the Railroad shall promptly (after it has knowledge of such Casualty Occurrence) and fully inform the Vendor in regard thereto. When the aggregate Casualty Value (as defined herein) of all units having suffered a Casualty Occurrence (exclusive of units having suffered a Casualty Occurrence with respect to which a payment shall have been made to the Vendor pursuant to this Article 8) hereunder shall exceed $250,000 (or such lesser amount as the Railroad may elect), the Railroad, within 90 days after the Railroad has knowledge of such event, shall file with the Vendor a certificate of an officer of the Railroad setting forth the Casualty Value of each unit of the Equipment having suffered a Casualty Occurrence and shall pay to the Vendor a sum equal to the aggregate Casualty Value as of the date of such payment of such unit or units of the Equipment having suffered a Casualty Occurrence, together with interest on such sum so being prepaid accrued to the date of such prepayment, but without premium, (the Railroad hereby agreeing to make such payment of accrued interest to the Vendor at the time it makes payment of such Casualty Value to the Vendor); provided, however, if and so long as no event of default

shall have occurred and be continuing hereunder, in lieu of making all or any portion of such payment to the Vendor, the Railroad may, on or before the expiration of such 90-day period, cause to be transferred to the Vendor a replacement unit or units of standard gauge railroad equipment (other than passenger or work equipment of types other than locomotives) and receive credit against the Casualty Value payment it would otherwise have been required to make in an amount equal to the value threof. The value of any unit or units of replacement equipment shall be equal to the cost thereof, if new, as specified in the invoice therefor delivered to the Vendor or, if not new, the lesser of (y) the fair market value thereof or (z) the original cost thereof less depreciation at a rate equal to 1/15th of such cost for each year in service, all as set forth in a certificate of an officer of the Railroad delivered to the Vendor at the time of such replacement. Any unit of replacement equipment shall have a remaining useful life (as evidenced by a certificate of an operating officer at the Railroad) at least as long as that which the Equipment being replaced would have had but for the Casualty Occurrence. In case any money is applied to prepay indebtedness, it shall be so applied, together with the interest due thereon, on the business day next following receipt by the Vendor of the appropriate payment, to reduce instalments of the aggregate Conditional Sale Indebtedness thereafter falling due in the inverse order of maturity thereof without premium.

The Casualty Value of each unit of the Equipment (other than a replacement unit) shall be deemed to be that amount which bears the same ratio to the original Purchase Price thereof (less, in the event that the Railroad shall have made any payment or payments under the provisions of subparagraph (a) of the third paragraph of Article 4 hereof, an amount which bears the same ratio to the aggregate of all such payments as the original Purchase Price of such unit bears to the original aggregate Purchase Price of all the Equipment) as the unpaid Conditional Sale Indebtedness (without giving effect to any prepayments then or theretofore made pursuant to this Article 8) as of the date payment is made with respect to such Casualty Occurrence bears to the original Conditional Sale Indebtedness. The Casualty Value of each replacement unit shall be deemed to be that amount which bears the same ratio to the portion of the cost thereof paid by the Vendor as the unpaid Conditional Sale Indebtedness ness (without giving effect to any prepayments then or theretofore made pursuant to this Article 8) as of the date payment

is made with respect to such Casualty Occurrence bears to the unpaid Conditional Sale Indebtedness (without giving effect to any such prepayments) as of the date of acquisition by the Vendor of such replacement unit.

The Railroad will cause any replacement unit or units to be marked as provided in Article 7 hereof. Any and all such replacements of Equipment shall constitute accessions to the Equipment and shall be subject to all appropriate terms and conditions of this Agreement as though part of the original Equipment delivered hereunder and shall be included in the term "Equipment" as used in this Agreement. Title to all such replacement units shall be free and clear of all liens and encumbrances except the liens permitted by the second paragraph of Article 12 hereof and shall be taken initially and shall remain in the name of the Vendor subject to the provisions hereof, and the Railroad shall execute, acknowledge, deliver, file, record or deposit all such documents and do any and all such acts as may be necessary to cause such replacement units to come under and be subject to this Agreement. All such replacement units shall be guaranteed and warranted in like manner as is customary at the time for similar equipment. Whenever the Railroad shall cause to be transferred to the Vendor a unit or units of replacement Equipment, the Railroad shall deliver to the Vendor an executed counterpart of an opinion of counsel covering the matters set forth in this paragraph.

In order to facilitate the sale or other disposition of any Equipment suffering a Casualty Occurrence, in respect of which the Railroad shall have paid to the Vendor the Casualty Value and/or shall have caused to be transferred to the Vendor a unit or units of replacement Equipment, the Vendor shall, upon request of the Railroad, execute and deliver to the Railroad or the Railroad's vendee, assignee or nominee, a bill of sale (without warranties) for such Equipment, and such other documents as may be required to release such Equipment from the terms and scope of this Agreement, in such form as may be reasonably requested by the Railroad.

The Railroad will at all times prior to the payment in full of the Conditional Sale Indebtedness together with interest thereon and all other payments required hereby, at its own expense, cause to be carried and maintained insurance in respect of the Equipment consisting of locomotives at the time subject hereto, and public liability insurance,

in amounts and against risks customarily insured against by railroad companies on similar equipment, and in any event in amounts and against risks comparable to those insured against by the Railroad on equipment owned by it; provided, however, that the Railroad may act as self-insurer in respect of losses and damage not exceeding $3,000,000 in respect of any single occurrence.

ARTICLE 9. Maintenance; Compliance with Laws and Rules. The Railroad will at all times maintain the Equipment or cause the Equipment to be maintained in good order and repair at its own expense.

During the term of this Agreement, the Railroad will at all times comply in all respects with all laws of the jurisdictions in which its operations involving the Equipment may extend, with the interchange rules of the Asociation of American Railroads and with all lawful rules of the Department of Transportation, Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Equipment, to the extent that such laws and rules affect the title, operation or use of the Equipment, and in the event that such laws or rules require any alteration, replacement or addition of any part on any unit of the Equipment, the Railroad will conform therewith, at its own expense; provided, however, that the Railroad may, in good faith, contest the validity or application of any such law or rule in any reasonable manner which does not, in the opinion of the Vendor, adversely affect the property or rights of the Vendor under this Agreement.

ARTICLE 10. Reports and Inspections. On or before March 31 in each year, commencing with the calendar year 1976, the Railroad shall furnish to the Vendor an accurate statement signed by an officer of the Railroad (a) setting forth as at the preceding December 31 the amount, description and numbers of all units of the Equipment that have suffered a Casualty Occurrence during the preceding calendar year (or since the date of this Agreement in the case of the first such statement) or that have been withdrawn from use pending repairs (other than running repairs) and such other information regarding the condition and state of repair of the Equipment as the Vendor may reasonably request and (b) stating that, in the case of all Equipment repaired or repainted during the period covered by such statement, the numbers and markings required by Article 7 hereof have

been preserved or replaced. During the term of this Agreement, the Vendor shall have the right, by its agents, to inspect the Equipment and the Railroad's records with respect thereto at such times and locations as the Vendor may reasonably request.

The Railroad shall furnish (i) as soon as available and in any event within 60 days after the end of each quarterly period, except the last, of each fiscal year, a balance sheet of the Railroad (as filed with the Interstate Commerce Commission (hereinafter called the ICC)) as at the end of such period, and an income statement of the Railroad as filed with the ICC for the period beginning on the first day of such fiscal year and ending on the date of such balance sheet, setting forth comparative figures for the corresponding period of the preceding fiscal year, all in reasonable detail and certified by the principal accounting officer of the Railroad, and (ii) as soon as available and in any event within 120 days after the end of each fiscal year, a copy of the Railroad's annual report as filed with the ICC, which shall include the balance sheet, income statement and statement of retained income of the Railroad certified by the principal accounting officer of the Railroad and which shall be accompanied by a letter from the independent accountants for Santa Fe Industries, Inc., the parent of the Railroad, stating that such financial statements, restated to generally accepted accounting principles, were included in the certified consolidated financial statement of Santa Fe Industries, Inc., and that such certified financial statements are not qualified with respect to the Railroad and, in the event a restatement to generally accepted accounting principles is required, such letter shall be accompanied by a schedule which shall describe such restatement in reasonable detail.

ARTICLE 11. Possession and Use. The Railroad, so long as an event of default shall not have occurred under this Agreement and be continuing, shall be entitled to the possession of the Equipment and the use thereof upon the lines of railroad owned or operated by it either alone or jointly with others and whether under lease or otherwise, or upon the lines of railroad owned or operated by any railroad company controlled by, or under common control with, the Railroad, or over which it has trackage rights, or upon connecting and other carriers in the usual interchange of traffic, from and after delivery of the Equipment by the Builder to the Railroad, but only upon and subject to all the terms and conditions of this Agreement.

ARTICLE 12. Prohibition Against Liens. The Railroad will pay or discharge any and all sums claimed by any party from, through or under the Railroad or its successors or assigns which, if unpaid, might become a lien, charge or security interest on the Equipment, or any unit thereof, equal or superior to the Vendor's title thereto or property therein; provided, however, that the Railroad shall be under no obligation to pay or discharge any such claim so long as it is contesting in good faith and by appropriate legal proceedings such claim and the nonpayment thereof does not, in the opinion of the Vendor, adversely affect the property or rights of the Vendor in or to the Equipment or otherwise under this Agreement. Any amounts paid by the Vendor in discharge of liens, charges or security interests upon the Equipment shall be secured by and under this Agreement.

This covenant will not be deemed breached by reason of liens for taxes, assessments or governmental charges or levies, in each case not due and delinquent, or undetermined or inchoate materialmen's, mechanics', workmen's, repairmen's or other like liens arising in the ordinary course of business and, in each case, not delinquent.

ARTICLE 13. Railroad's Indemnities. The Railroad agrees to indemnify, protect and hold harmless the Vendor from and against all losses, damages, injuries, liabilities, claims and demands whatsoever, regardless of the cause thereof, and expenses in connection therewith, including counsel fees, arising out of retention by the Vendor of title to the Equipment, the use and operation thereof by the Railroad during the period when title thereto remains in the Vendor or the transfer of title to the Equipment by the Vendor pursuant to any of the provisions of this Agreement, except, however, any losses, damages, injuries, liabilities, claims and demands whatsoever arising out of any tort, breach of warranty or failure to perform any covenant hereunder by any Builder. This covenant of indemnity shall continue in full force and effect notwithstanding the full payment of all sums due under this Agreement, or the satisfaction, discharge or termination of this Agreement in any manner whatsoever.

ARTICLE 14. Patent Indemnities; Builder's Warranty of Material and Workmanship. Except in cases of articles or materials specified by the Railroad and not manufactured by a Builder and in cases of designs, systems, processes, formulae or combinations specified by the Railroad and not

developed or purported to be developed by any Builder, each Builder agrees to indemnify, protect and hold harmless the Railroad from and against any and all liability, claims, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Railroad, its assigns or the users of its respective Equipment because of the use in or about the construction or operation of any of the Equipment of any design, system, process, formula, combination, article or material which infringes or is claimed to infringe on any patent or other right. The Railroad likewise will indemnify, protect and hold harmless the Vendor from and against any and all liability, claims, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Vendor because of the use in or about the construction or operation of any of the Equipment of any article or material specified by the Railroad and not manufactured by a Builder or of any design, system, process, formula or combination specified by the Railroad and not developed or purported to be developed by a Builder which infringes or is claimed to infringe on any patent or other right. Each Builder agrees to and hereby does, to the extent legally possible without impairing any claim, right or cause of action hereinafter referred to, assign, set over and deliver to the Railroad every claim, right and cause of action which such Builder has or hereafter shall have against the seller or sellers of any designs, systems, processes, formulae, combinations, articles or materials specified by the Railroad and purchased or otherwise acquired by such Builder for use in or about the construction or operation of any of the Equipment on the ground that any such design, system, process, formula, combination, article or material or operation thereof infringes or is claimed to infringe on any patent or other right. Each Builder further agrees to execute and deliver to the Railroad or the users of the Equipment all and every such further assurance as may be reasonably requested by the Railroad more fully to effectuate the assignment and delivery of every such claim, right and cause of action. Each Builder will give notice to the Railroad of any claim known to such Builder from which liability may be charged against the Railroad hereunder and the Railroad will give notice to the appropriate Builder of any claim known to the Railroad from which liability may be charged against any Builder hereunder. Such covenants of indemnity shall continue in full force and effect notwithstanding the full payment of all sums due under this Agreement, or the satisfaction,

discharge or termination of this Agreement in any manner whatsoever.

Each Builder's warranty of material and workmanship is set forth in Schedule A hereto.

ARTICLE 15. Assignments. The Railroad will not sell, assign, transfer or otherwise dispose of its rights under this Agreement or, except as provided in Article 11 hereof, transfer the right to possession of any unit of the Equipment without first obtaining the written consent of the Vendor. A sale, assignment, transfer or disposition to a railroad company organized under the laws of the United States of America or any of the states thereof which shall acquire all or substantially all the lines of railroad of the Railroad, and which, by execution of an appropriate instrument satisfactory to the Vendor, shall assume and agree to perform each of, and all, the obligations and covenants of the Railroad under this Agreement, shall not be deemed a breach of this covenant.

All or any of the rights, benefits and advantages of the Vendor under this Agreement, including the right to receive the payments herein provided to be made by the Railroad, may be assigned by the Vendor and reassigned by any assignee at any time or from time to time. No such assignment shall subject any assignee to, or relieve any Builder from, any of the obligations of such Builder to construct and deliver the Equipment in accordance with this Agreement or to respond to its respective warranties and indemnities contained or referred to in Article 14 hereof, or relieve the Railroad of any of its obligations to such Builders under Articles 2, 3, 4, 5, 13 and 14 hereof, Schedule A hereto and this Article 15 or of any other obligation which, according to its terms or context, is intended to survive an assignment.

Upon any such assignment either the assignor or the assignee shall give written notice to the Railroad, together with a counterpart or copy of such assignment, stating the identity and post office address of the assignee, and such assignee shall by virtue of such assignment acquire all the assignor's right, title and interest in and to the Equipment and this Agreement, or in and to a portion thereof, as the case may be, subject only to such reservations as may be contained in such assignment. From and after the receipt by the Railroadd of the notification of any such

assignment, all payments thereafter to be made by the Railroad under this Agreement shall, to the extent so assigned, be made to the assignee in such manner as it may direct.

The Railroad recognizes that it is the custom of railroad equipment manufacturers to assign conditional sale agreements and understands that the assignment of this Agreement, or of some of or all the rights of the Vendor hereunder, is contemplated. The Railroad expressly represents, for the purpose of assurance to any person, firm or corporation considering the acquisition of this Agreement or of all or any of the rights of the Vendor hereunder and for the purposes of inducing such acquisition, that in the event of such assignment by the Vendor as hereinbefore provided, the rights of such assignee to the entire unpaid indebtedness in respect of the Purchase Price or such part thereof as may be assigned, together with interest thereon, as well as any other rights hereunder which may be so assigned, shall not be subject to any defense, setoff, counterclaim or recoupment whatsoever arising out of any breach of any obligation of a Builder with respect to the Equipment or the manufacture, construction, delivery or warranty thereof, or with respect to any indemnity herein contained, nor subject to any defense, setoff, counterclaim or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to the Railroad by a Builder. Any and all such obligations, howsoever arising, shall be and remain enforceable by the Railroad against and only against the respective Builders.

The Railroad will (a) in connection with each settlement for the Equipment subsequent to such assignment, deliver to the assignee, at least five business days prior to the Closing Date for the Group fixed in the notice by the Railroad, all documents required by the terms of such assignment to be delivered to such assignee in connection with such settlement, in such number of counterparts or copies as may reasonably be requested, except for any opinion of counsel for such assignee, and (b) furnish to such assignee such number of counterparts of any other certificate or paper required by the Vendor as may reasonably be requested.

If this Agreement shall have been assigned by the Builders and the assignee shall not make payment to a Builder with respect to units of its Equipment as provided in the instrument making such assignment, such Builder will promptly notify the Railroad of such event and, if such

amount shall not have been previously paid by such assignee, the Railroad will, not later than 90 days after the date such payment was due, pay or cause to be paid to such Builder the aggregate unpaid Purchase Price of such units of its Equipment, together with interest from the day such payment was due to the date of payment by the Railroad at the highest prime rate of interest charged by any of the four New York City banks having the largest total assets, in effect on the date such payment was due.

ARTICLE 16. Defaults. In the event that any one or more of the following events of default shall occur and be continuing, to wit:

(a) the Railroad shall fail to pay in full any indebtedness in respect of the Purchase Price of the Equipment or any other sum payable by the Railroad as provided in this Agreement within ten days after payment thereof shall be due hereunder; or

(b) the Railroad shall, for more than 30 days after the Vendor shall have demanded in writing performance thereof, fail or refuse to comply with any covenant, agreement, term or provision of this Agreement, or of any agreement entered into concurrently herewith relating to the financing of the Equipment on its part to be kept or performed or to make provision satisfactory to the Vendor for such compliance; or

(c) a petition for reorganization under Section 77 of the Bankruptcy Act, as now constituted or as said Section 77 may be hereafter amended, shall be filed by or against the Railroad and, unless such petition shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Railroad under this Agreement shall not have been (and shall not continue to have been) duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees appointed (whether or not subject to ratification) in such proceedings in such manner that such obligations shall have the same status as obligations incurred by such trustee or trustees, within 30 days after such appointment, if any, or 60 days after such petition shall have been filed, whichever shall be earlier; or

(d) any other proceedings shall be commenced by or against the Railroad for any relief under any bankruptcy or insolvency law, or law relating to the relief of debtors, readjustments of indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which does not permit any readjustment of the indebtedness payable hereunder), and, unless such proceedings shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Railroad under this Agreement shall not have been (and shall not continue to have been) duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed (whether or not subject to ratification) for the Railroad or for its property in connection with any such proceedings in such manner that such obligations shall have the same status as obligations incurred by such trustee or trustees or receiver or receivers, within 30 days after such appointment, if any, or 60 days after such proceedings shall have been commenced, whichever shall be earlier; or

(e) the Railroad shall make or suffer any unauthorized assignment or transfer of this Agreement or any interest herein or any unauthorized transfer of the right to possession of any unit of the Equipment;

then at any time after the occurrence of such an event of default the Vendor may, upon written notice to the Railroad and upon compliance with any mandatory legal requirements then in force and applicable to such action by the Vendor, declare (hereinafter called a Declaration of Default) the entire indebtedness in respect of the Purchase Price of the Equipment, together with the interest thereon then accrued and unpaid, immediately due and payable, without further demand, and thereafter the aggregate of the unpaid balance of such indebtedness and interest shall bear interest from the date of such Declaration of Default at the rate per annum specified in Article 4 hereof as being applicable to amounts remaining unpaid after becoming due and payable, to the extent legally enforceable. The Vendor shall thereupon be entitled to recover judgment for the entire unpaid balance of the indebtedness in respect of the Purchase Price of the Equipment so payable, with interest as aforesaid, and to collect such judgment out of any property of

the Railroad wherever situated. The Railroad shall promptly notify the Vendor of any event which has come to its attention which constitutes, or which with the giving of notice and/or lapse of time could constitute, an event of default under this Agreement.

The Vendor may at its election waive any such event of default and its consequences and rescind and annul any Declaration of Default by notice to the Railroad in writing to that effect, and thereupon the respective rights of the parties shall be as they would have been if no such event of default had occurred and no Declaration of Default had been made. Notwithstanding the provisions of this paragraph, it is expressly understood and agreed by the Railroad that time is of the essence of this Agreement and that no such waiver, rescission or annulment shall extend to or affect any other or subsequent default or impair any rights or remedies consequent thereon.

ARTICLE 17. Remedies. At any time during the continuance of a Declaration of Default, the Vendor may, subject to compliance with any mandatory legal requirements then in force and applicable to the action to be taken by the Vendor, take or cause to be taken by its agent or agents immediate possession of the Equipment, or one or more of the units thereof, without liability to return to the Railroad any sums theretofore paid and free from all claims whatsoever, except as hereinafter in this Article 17 expressly provided, and may remove the same from possession and use of the Railroad or any other person and for such purpose may enter upon the Railroad's premises or any other premises where the Equipment may be located and may use and employ in connection with such removal any supplies, services and aids and any available trackage and other facilities or means of the Railroad.

In case the Vendor shall demand possession of the Equipment pursuant to this Agreement and shall reasonably designate a point or points upon the premises of the Railroad for the delivery of the Equipment to the Vendor, the Railroad shall, at its own expense, forthwith and in the usual manner (including, but not by way of limitation, giving prompt telegraphic and written notice to the Association of American Railroads and all railroads to which any part of the Equipment has been interchanged to return the Equipment so interchanged), cause (a) the Equipment to be moved to such point or points on its lines as shall

be designated by the Vendor and shall there deliver the Equipment or cause it to be delivered to the Vendor and (b) the Equipment to be moved to such interchange point or points of the Railroad as shall be designated by the Vendor upon any sale, lease or other disposal of all or any part of the Equipment by the Vendor. At the option of the Vendor, the Vendor may keep the Equipment on any of the lines or premises of the Railroad until the Vendor shall have leased, sold or otherwise disposed of the same, and for such purpose the Railroad agrees to furnish, without charge for rent or storage, the necessary facilities at any point or points selected by the Vendor reasonably convenient to the Railroad and, at the Railroad's risk, to permit inspection of the Equipment by the Vendor, the Vendor's representatives and prospective purchasers and users. This agreement to deliver the Equipment and furnish facilities as hereinbefore provided is of the essence of the agreement between the parties, and, upon application to any court of equity having jurisdiction in the premises, the Vendor shall be entitled to a decree against the Railroad requiring specific performance hereof. The Railroad hereby expressly waives any and all claims against the Vendor and its agent or agents for damages of whatever nature in connection with any retaking of any unit of the Equipment in any reasonable manner.

At any time during the continuance of a Declaration of Default, the Vendor (after retaking possession of the Equipment as hereinbefore in this Article 17 provided) may at its election and upon such notice as is hereinafter set forth retain the Equipment in satisfaction of the entire indebtedness in respect of the Purchase Price of the Equipment and make such disposition thereof as the Vendor shall deem fit. Written notice of the Vendor's election to retain the Equipment shall be given to the Railroad by telegram or registered mail, addressed as provided in Article 21 hereof, and to any other persons to whom the law may require notice, within 30 days after such Declaration of Default. In the event that the Vendor should elect to retain the Equipment and no objection is made thereto within the 30-day period described in the second proviso below, all the Railroad's rights in the Equipment shall thereupon terminate and all payments made by the Railroad may be retained by the Vendor as compensation for the use of the Equipment by the Railroad; <u>provided, however</u>, that if the Railroad, before the expiration of the 30-day period described in the proviso below,

should pay or cause to be paid to the Vendor the total unpaid balance of the indebtedness in respect of the Purchase Price of the Equipment, together with interest thereon accrued and unpaid and all other payments due under this Agreement as well as expenses of the Vendor in retaking possession of, removing and storing the Equipment and the Vendor's reasonable attorneys' fees, then in such event absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Railroad; provided, further, that if the Railroad or any other persons notified under the terms of this paragraph object in writing to the Vendor within 30 days from the receipt of notice of the Vendor's election to retain the Equipment, then the Vendor may not so retain the Equipment, but shall sell, lease or otherwise dispose of it or continue to hold it pending sale, lease or other disposition as hereinafter provided or as may otherwise be permitted by law. If the Vendor shall have given no notice to retain as hereinabove provided or notice of intention to dispose of the Equipment in any other manner, it shall be deemed to have elected to sell the Equipment in accordance with the provisions of this Article 17.

At any time during the continuance of a Declaration of Default, the Vendor, with or without retaking possession thereof, at its election and upon reasonable notice to the Railroad and to any other persons to whom the law may require notice of the time and place, may sell the Equipment, or any unit thereof, free from any and all claims of the Railroad or any other party claiming from, through or under the Railroad, at law or in equity, at public or private sale and with or without advertisement as the Vendor may determine; provided, however, that if, prior to such sale and prior to the making of a contract for such sale, the Railroad should tender full payment of the total unpaid balance of the indebtedness in respect of the Purchase Price of the Equipment, together with interest thereon accrued and unpaid and all other payments due under this Agreement as well as expenses of the Vendor in retaking possession of, removing, storing, holding and preparing the Equipment for, and otherwise arranging for, the sale and the Vendor's reasonable attorneys' fees, then in such event absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Railroad. The proceeds of such sale, less the attorneys' fees and any other expenses incurred by the Vendor in retaking possession of, removing, storing,

holding, preparing for sale and selling the Equipment, shall be credited on the amount due to the Vendor under the provisions of this Agreement.

Any sale hereunder may be held or conducted at such place or places and at such time or times as the Vendor may specify, in one lot and as an entirety or in separate lots and without the necessity of gathering at the place of sale the property to be sold, and in general in such manner as the Vendor may determine. The Vendor or the Railroad may bid for and become the purchaser of the Equipment, or any unit thereof, so offered for sale. The Railroad shall be given written notice of such sale not less than ten days prior thereto, by telegram or registered mail addressed to the Railroad as provided in Article 21 hereof. If such sale shall be a private sale (which shall be deemed to mean only a sale where an advertisement for bids has not been published in a newspaper of general circulation or a sale where less than 40 railroads have been solicited in writing to submit bids), it shall be subject to the right of the Railroad to purchase or provide a purchaser, within ten days after notice of the proposed sale price, at the same price offered by the intending purchaser or a better price. In the event that the Vendor shall be the purchaser of the Equipment, it shall not be accountable to the Railroad (except to the extent of surplus money received as hereinafter provided in this Article 17), and in payment of the purchase price therefor the Vendor shall be entitled to have credited on account thereof all or any part of the sums due to the Vendor from the Railroad hereunder. From and after the date of any such sale, the Railroad shall pay to the Vendor the per diem interchange for each unit of Equipment which shall not have been assembled, as hereinabove provided, by the date of such sale for each day from the date of such sale to the date of delivery to the Purchaser at such sale.

Each and every power and remedy hereby specifically given to the Vendor shall be in addition to every other power and remedy hereby specifically given or now or hereafter existing at law or in equity, and each and every power and remedy may be exercised from time to time and simultaneously and as often and in such order as may be deemed expedient by the Vendor. All such powers and remedies shall be cumulative, and the exercise of one shall not be deemed a waiver of the right to exercise any other or others. No delay or omission of the Vendor in the exercise of any such power or

remedy and no renewal or extension of any payments due hereunder shall impair any such power or remedy or shall be contrued to be a waiver of any default or an acquiescence therein. Any extension of time for payment hereunder or other indulgence duly granted to the Railroad shall not otherwise alter or affect the Vendor's rights or the Railroad's obligations hereunder. The Vendor's acceptance of any payment after it shall have become due hereunder shall not be deemed to alter or affect the Railroad's obligations or the Vendor's rights hereunder with respect to any subsequent payments or default therein.

If, after applying all sums of money realized by the Vendor under the remedies herein provided, there shall remain any amount due to it under the provisions of this Agreement, the Railroad shall pay the amount of such deficiency to the Vendor upon demand, together with interest from the date of such demand to the date of payment by the Railroad at the rate per annum set forth in Article 4 hereof applicable to amounts remaining unpaid after becoming due and payable. If the Railroad shall fail to pay such deficiency, the Vendor may bring suit therefor and shall be entitled to recover a judgment therefor against the Railroad. If, after applying as aforesaid all sums realized by the Vendor, there shall remain a surplus in the possession of the Vendor, such surplus shall be paid to the Railroad.

The Railroad will pay all reasonable expenses, including attorneys' fees, incurred by the Vendor in enforcing its remedies under the terms of this Agreement. In the event that the Vendor shall bring any suit to enforce any of its rights hereunder and shall be entitled to judgment, then in such suit the Vendor may recover reasonable expenses, including attorneys' fees, and the amount thereof shall be included in such judgment.

The foregoing provisions of this Article 17 are subject in all respects to all mandatory legal requirements at the time in force and applicable thereto.

Article 18. Applicable State Laws. Any provision of this Agreement prohibited by any applicable law of any jurisdiction (which is not overridden by applicable federal law) shall as to such jurisdiction be ineffective, without modifying the remaining provisions of this Agreement. Where, however, the conflicting provisions of any such applicable

law may be waived, they are hereby waived by the Railroad to the full extent permitted by law, it being the intention of the parties hereto that this Agreement shall be deemed to be a conditional sale and enforced as such.

Except as otherwise provided in this Agreement, the Railroad, to the full extent permitted by law, hereby waives all statutory or other legal requirements for any notice of any kind, notice of intention to take possession of or to sell or lease the Equipment, or any unit thereof, and any other requirements as to the time, place and terms of the sale or lease thereof, any other requirements with respect to the enforcement of the Vendor's rights under this Agreement and any and all rights of redemption.

ARTICLE 19. Recording. The Railroad will cause this Agreement, any assignments hereof and any amendments or supplements hereto or thereto to be filed and recorded with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act; and the Railroad will from time to time do and perform any other act and will execute, acknowledge, deliver, file, register, deposit and record any and all further instruments required by law or reasonably requested by the Vendor for the purpose of proper protection, to the satisfaction of counsel for the Vendor, of its title to the Equipment and its rights under this Agreement or for the purpose of carrying out the intention of this Agreement; and the Railroad will promptly furnish to the Vendor certificates or other evidence of such filing, registering, depositing and recording satisfactory to the Vendor.

ARTICLE 20. Payment of Expenses. The Railroad will pay all reasonable costs and expenses (other than the fees and expenses of counsel for any Builder) incident to this Agreement and the first assignment of this Agreement, and any instrument supplemental or related hereto or thereto, including all fees and expenses of counsel for the first assignee of this Agreement, and all reasonable costs and expenses in connection with the transfer by any party of interests acquired in such first assignment. If the first assignee is not an agent, such assignee may appoint a bank or trust company located in either the Borough of Manhattan, City and State of New York, or Chicago, Illinois, having capital and surplus aggregating at least $40,000,000 to act as agent on its behalf to hold all the right, title and interests of the Builders under this Agreement assigned

to it, all upon and subject to the terms and conditions provided for in a written agreement to be entered into by the first assignee and such agent in form and substance satisfactory to the first assignee and such agent; and the Railroad hereby agrees to pay all reasonable costs and expenses of such Agent. Prior to appointing such an agent, the assignee shall consult with the Railroad and shall give reasonable consideration to the recommendations of the Railroad as to the bank or trust company to be appointed.

ARTICLE 21. Notice. Any notice hereunder to any of the parties designated below shall be deemed to be properly served if delivered or mailed to it at its chief place of business at the following specified addresses:

(a) to the Railroad, at 80 East Jackson Street, Chicago, Illinois 60604, attention of R. W. Harper, Vice President-Finance.

(b) to a Builder, at its address specified in Item 1 of Schedule A hereto, and

(c) to any assignee of the Vendor or of the Railroad, at such address as may have been furnished in writing to each of the other parties hereto by such assignee,

or at such other address as may have been furnished in writing by such party to the other parties to this Agreement.

ARTICLE 22. Article Heading; Effect and Modification of Agreement. All article headings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

This Agreement, including the Schedules hereto, exclusively states the rights of the Vendor and the Railroad with respect to the Equipment and supersedes all other agreements, oral or written, with respect to the Equipment. No variation or modification of this Agreement and no waiver of any of its provisions or conditions shall be valid unless in writing and signed by duly authorized officers of the Vendor and the Railroad.

ARTICLE 23. Law Governing. The Railroad warrants that its chief place of business and its chief executive offices are located in the State of Illinois. The terms

of this Agreement and all rights and obligations hereunder shall be governed by the laws of the State of Illinois; provided, however, that the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act and such additional rights arising out of the filing, recording or deposit hereof, if any, and of any assignment hereof as shall be conferred by the laws of the several jurisdictions in which this Agreement or any assignment hereof shall be filed, recorded or deposited.

ARTICLE 24. Execution. This Agreement may be executed in any number of counterparts, and such counterparts together shall constitute but one and the same contract. It shall not be necessary that any counterpart be signed by all the parties so long as any counterpart be signed by the Railroad and one or more Builders. If this Agreement is assigned by any Builder, the original counterpart of this Agreement shall be deemed to be the counterpart executed by such Builder and delivered to such assignee. Each Builder shall be bound hereunder, notwithstanding the failure of any other Builder to execute and deliver this Agreement, or perform its obligations hereunder. Although this Agreement is dated, for convenience, as of the date first set forth above, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

IN WITNESS WHEREOF, the parties hereto, each pursuant to due corporate authority, have caused this instrument to be executed in their respective corporate names by their officers, thereunto duly authorized, and their respective corporate seals to be hereunto affixed, duly attested, all as of the date first above written.

GENERAL MOTORS CORPORATION
(Electro-Motive Division),

by

_____
Vice President

[Corporate Seal]

Attest:

_____
Assistant Secretary

FMC CORPORATION,

by

_____
Vice President

[Corporate Seal]

Attest:

_____
Assistant Secretary

PULLMAN INCORPORATED
(Pullman-Standard division),

by

_____
Vice President

[Corporate Seal]

Attest:

_____
Assistant Secretary

GENERAL ELECTRIC COMPANY,

by

_____
Manager-Marketing,
Locomotive Products Department

[Corporate Seal]

Attest:

_____
Attesting Secretary

PACCAR INC,

by

_____
Vice President

[Corporate Seal]

Attest:

_____
Assistant Secretary

ACF INDUSTRIES, INCORPORATED,

by

_____
Vice President

[Corporate Seal]

Attest:

_____
Assistant Secretary

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY,

by

Vice President-Finance

[Corporate Seal]

Attest:

Assistant Secretary

STATE OF ILLINOIS,)
) ss.:
COUNTY OF COOK,)

On this day of 1975, before me personally appeared , to me personally known, who, being by me duly sworn, says that he is a Vice President of GENERAL MOTORS CORPORATION (Electro-Motive Division), that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

_____
Notary Public

[Notarial Seal]

My Commission Expires

STATE OF ILLINOIS,)
) ss.:
COUNTY OF COOK,)

On this day of 1975, before me personally appeared , to me personally known, who, being by me duly sworn, says that he is a Vice President of FMC CORPORATION, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

_____
Notary Public

[Notarial Seal]

My Commission Expires

STATE OF ILLINOIS,)
) ss.:
COUNTY OF COOK,)

On this day of 1975, before me personally appeared , to me personally known, who, being by me duly sworn, says that he is a Vice President of PULLMAN INCORPORATED (Pullman-Standard division), that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Notary Public

[Notarial Seal]

My Commission Expires

COMMONWEALTH OF PENNSYLVANIA,)
) ss.:
COUNTY OF ERIE,)

On this 3rd day of February 1975, before me personally appeared C.S. Bressler, to me personally known, who, being by me duly sworn, says that he is Manager-Marketing, Locomotive Products Department, of GENERAL ELECTRIC COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Margaret M. Frew
Notary Public

MARGARET M. FREW, Notary Public
Erie, Erie Co., Pa.
My Commission Expires June 7, 1976

[Notarial Seal]

My Commission Expires

STATE OF WASHINGTON,)
) ss.:
COUNTY OF KING,)

On this day of 1975, before me personally appeared , to me personally known, who, being by me duly sworn, says that he is a Vice President of PACCAR INC, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

_____
Notary Public

[Notarial Seal]

My Commission Expires

STATE OF NEW YORK,)
) ss.:
COUNTY OF NEW YORK,)

On this day of 1975, before me personally appeared , to me personally known, who, being by me duly sworn, says that he is a Vice President of ACF INDUSTRIES, INCORPORATED, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

_____
Notary Public

[Notarial Seal]

My Commission Expires

STATE OF ILLINOIS,)
) ss.:
COUNTY OF COOK,)

On this 31st day of January 1975, before me personally appeared R. W. HARPER, to me personally known, who, being by me duly sworn, says that he is a Vice President of THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

E. M. Arrequin
Notary Public

[Notarial Seal]

My Commission Expires
FEBRUARY 1, 1977

SCHEDULE A

Item 1: (a) General Motors Corporation (Electro-Motive Division), a Delaware corporation, La Grange, Illinois 60525.

(b) FMC Corporation, a Delaware corporation, 4700 Northwest Front Avenue, Portland, Oregon 97210.

(c) Pullman Incorporated (Pullman Standard division), a Delaware corporation, 200 South Michigan Avenue, Chicago, Illinois 60604.

(d) General Electric Company, a New York corporation, 2901 East Lake Road, Erie, Pennsylvania 16501.

(e) PACCAR Inc, a Delaware corporation, 1400 North 4th Street, Renton, Washington 98055.

(f) ACF Industries, Incorporated, a New Jersey corporation, 750 Third Avenue, New York, New York 10017.

Item 2: (a) (General Motors Corporation (Electro-Motive Division)): The Builder warrants that the Equipment will be built in accordance with the Specifications and the standards and requirements set forth in Article 2 of the Conditional Sale Agreement to which this Schedule is attached (hereinafter called the Agreement) and warrants that the Equipment will be free from defects in material (except as to specialties incorporated therein which were specified by the Railroad and not manufactured by the Builder) and workmanship under normal use and service; the Builder's obligations under this paragraph being limited to making good at its plant any part or parts of any unit of the Equipment which, within two years after the delivery of such unit to the Railroad or before such unit has been in scheduled service 250,000 miles (whichever event shall first occur), shall be returned to the Builder with transportation charges

prepaid and which the Builder's examination shall disclose to its satisfaction to have been thus defective.

This warranty of the Builder shall not apply (i) to any locomotive components which shall have been repaired or altered unless repaired or altered by the Builder or its authorized service representatives, if, in its judgment, such repairs or alterations affect the stability of a unit of the Equipment or (ii) to any unit of the Equipment which has been subject to misuse, negligence or accident.

This warranty is expressly in lieu of all other warranties expressed or implied, including any implied warranty of merchantability or fitness for a particular purpose, and of all other obligations or liabilities on the part of the Builder, except for its obligations under Articles 2, 3, 4 and 14 of the Agreement. The Builder neither assumes nor authorizes any person to assume for it any other liability in connection with the construction and delivery of the Equipment, except as aforesaid.

The Builder further agrees with the Railroad that neither the inspection as provided in Article 3 of the Agreement, nor any examination, nor the acceptance of any units of the Equipment as provided in Article 3 of the Agreement shall be deemed a waiver or a modification by the Railroad of any of its rights hereunder.

The Builder further agrees to hold harmless the Railroad from claims, costs and liability to the Builder's employees arising out of and in the course of their employment and while on the Railroad's premises or equipment except when traveling as revenue passengers on the Railroad's trains, and except that the Builder shall not be liable for the Railroad's sole negligence.

The Builder reserves the right to make change

in the design of, or add any improvements to, units of the Equipment at any time without incurring any obligation to make similar changes or additions in respect of units of Equipment previously delivered to the Railroad.

(b) (FMC Corporation): The Builder warrants that the Equipment will be built in accordance with the Specifications and the standards and conditions set forth in Article 2 of the Conditional Sale Agreement to which this Schedule is attached (hereinafter called the Agreement), and, except in cases of articles and materials specified by the Railroad and not manufactured by the Builder, warrants the Equipment to be free from defects in material and workmanship under normal use and service, the liability of the Builder under this warranty being limited, as the Railroad may elect: (i) to repair of the defect at the Builder's plant at Portland, Oregon; or (ii) to replacement of the defective part; or (iii) to the cost of repair or replacement according to the AAR Code of Rules Governing Condition of and Repairs to Freight and Passenger Cars with Interchange of Traffic.

The foregoing warranty of the Builder shall begin at the time of delivery of a unit of Equipment to the Railroad and terminate one year after such delivery. <u>This warranty is expressly in lieu of all other warranties expressed or implied on the part of the Builder</u>, except for the patent indemnification included in Article 14 of of the Agreement and except as hereinafter provided in this Schedule A, and the Builder neither assumes nor authorizes any person to assume for it any other warranty liability in connection with the construction and delivery of the Equipment.

The Builder further agrees that the Railroad shall have the right to repair the Equipment furnished by the Builder of its manufacture and that repair parts for such equipment may be made by, or for, the Railroad or purchased

in the open market, as the Railroad may determine; and it is agreed the Equipment may be repaired by other railroads no matter where the repair parts are obtained. This agreement includes the right on the part of the Railroad to purchase repair parts for such Equipment in anticipation of breakage, instead of waiting until the breakage actually occurs before ordering the repair parts.

The Builder's patent indemnification set forth in Article 14 of the Agreement does not apply to designs, systems, processes and formulae utilized by the Builder in or about the construction of the Equipment, or any unit thereof, as the result of specification by the Railroad, other than for patents or other rights controlled by the Builder; and the Railroad shall indemnify and save harmless the Builder and/or manufacturer and the Vendor for the use of any designs, systems, processes and formulae utilized by the Builder in or about the construction of the Equipment, or any unit thereof, as the result of specification by the Railroad, as against any patent infringement claims or damages as specified in said Article 14, other than for patents or other rights controlled by the Builder.

The Builder will hold harmless the Railroad from claims, costs and liability to Builder's employees arising out of and in the course of their employment and while on the Railroad's premises or equipment except when traveling as revenue passengers on the Railroad's trains.

(c) (Pullman Incorporated (Pullman-Standard division)): The Builder warrants that the Equipment will be built in accordance with the Specifications and the standards and requirements set forth in Article 2 of the Conditional Sale Agreement to which this Schedule is attached (hereinafter called the Agreement) and warrants the Equipment will be free from defects in material (except as to specialties incorporated therein specified by the Railroad

and not manufactured by the Builder) and workmanship and design under normal use and service, the Builder's obligation under this Item 2 being limited to making good at its plant any part or parts of any unit of Equipment which shall, within one year after the delivery of such unit of Equipment to the Railroad, be returned to the Builder with transportation charges prepaid and which examination by the Builder shall disclose to its satisfaction to have been thus defective.

The foregoing warranty is expressly in lieu of all other warranties, expressed or implied, including any implied merchantability or fitness for a particular purpose, and of all other obligations or liabilities on the part of the Builder, except for its obligations under Articles 2, 3, 4 and 14 of the Agreement, and the Builder neither assumes nor authorizes any person to assume for it any other liability in connection with the construction of the Equipment and delivery of the Equipment, except as aforesaid. It is further understood and agreed that in no event shall the Builder be liable for indirect or consequential damages of any kind.

The Builder further agrees with the Railroad that neither the inspection provided in Article 3 of the Agreement, nor any examination, nor the acceptance of any units of the Equipment as provided in said Article 3 shall be deemed a waiver or a modification by the Railroad of any of its rights under this Item 2.

(d) (General Electric Company): The Builder warrants that the Equipment will be built in accordance with the Specifications and the standards and requirements referred to in Article 2 of the Conditional Sale Agreement to which this Schedule is attached (hereinafter called the Agreement) and warrants the equipment will be free from defects in material (except as to specialties incorporated therein that are not of the Builder's own specification or design) and workmanship under normal use

and service; the Builder's obligations under this paragraph being limited to making good at its plant any part or parts of any unit of the Equipment which, within one year after the delivery of such unit to the Railroad, shall be returned to the Builder with transportation charges prepaid and which the Builder's examination shall disclose to its satisfaction to have been thus defective.

This warranty of the Builder shall not apply (i) to any locomotive components which shall have been repaired or altered, unless repaired or altered by the Builder or its authorized service representatives, if, in its judgment, such repairs or alterations affect the stability of a unit of the Equipment or (ii) to any unit of the Equipment which has been subject to misuse, negligence or accident.

THIS WARRANTY IS EXPRESSLY IN LIEU OF ALL OTHER WARRANTIES EXPRESSED OR IMPLIED, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND OF ALL OTHER OBLIGATIONS OR LIABILITIES ON THE PART OF THE BUILDER, EXCEPT FOR ITS OBLIGATIONS UNDER THE AGREEMENT. THE BUILDER NEITHER ASSUMES NOR AUTHORIZES ANY PERSON TO ASSUME FOR IT ANY OTHER LIABILITY IN CONNECTION WITH THE CONSTRUCTION AND DELIVERY OF THE EQUIPMENT, EXCEPT AS AFORESAID.

In no event shall the Builder be liable for special or consequential damages. The Builder's liability on any claim of any kind including negligence, or for any loss or damage arising out of, connected with, or resulting from, the Agreement, or from the performance or breach thereof, or from the manufacture, sale, delivery, resale, repair or use of any unit of the Equipment covered by, or furnished under, the Agreement, shall in no case exceed the Purchase Price of such unit of the Equipment involved in the claim, and upon the expiration of the warranty period specified above all such liability shall terminate. The Builder shall have no liability

for any unit of the Equipment or part thereof which becomes defective by reason of improper storage or application, misuse, negligence, accident or improper operation, maintenance, repairs or alterations on the part of the Railroad or any third party other than the Builder. The foregoing warranty shall constitute the sole remedy of the Railroad and the sole liability of the Builder.

It is understood that the Builder has the right to make changes in the design of, or to add improvements to units of the Equipment at any time without incurring any obligations to install, at the Builder's expense, the same or other locomotives sold by Builder.

The Builder further agrees with the Railroad that neither the inspection as provided in the Agreement, nor any examination, nor the acceptance of any units of the Equipment as provided in the Agreement shall be deemed a waiver or a modification by the Railroad of any of its rights under this Item 2.

(e) (PACCAR Inc): The Builder warrants that the Equipment will be built in accordance with the requirements, specifications and standards set forth in Article 2 of the Conditional Sale Agreement to which this Schedule is attached (hereinafter called the Agreement) and, except in cases of articles and materials specified by the Railroad and not manufactured by the Builder, warrants the Equipment to be free from defects in material and workmanship under normal use and service, the liability of the Builder under this warranty being limited, as the Railroad may elect: (i) to repair of the defects at the Builder's plant; or (ii) to replacement of a defective part; or (iii) to the cost of repair or replacement according to the AAR Code of Rules Governinig Condition of and Repairs to Freight and Passenger Cars with Interchange of Traffic. The Builder shall be given reasonable opportunity to verify any claim of defects in workmanship or materials.

The foregoing warranty of the Builder shall begin at the time of delivery of a unit of the Equipment to the Railroad and terminate two years after such delivery. THE BUILDER MAKES NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. The Railroad's right under the foregoing warranty shall be its sole and exclusive remedy and the Builder will have no liability for lost profit or for indirect, incidental, consequential or commercial losses. This warranty is expressly in lieu of all other warranties express or implied on the part of the Builder, except for the patent indemnification included in Article 14 of this Agreement. The Builder neither assumes nor authorizes any person to assume for it any other warranty liability in connection with the construction and delivery of the Equipment.

The Builder further agrees with the Railroad that neither the inspection as provided in Article 3 of the Agreement nor any examination nor the acceptance of any units of the Equipment as provided in said Article 3 shall be deemed a waiver or a modification by the Railroad of any of its rights under this Item 2.

The Builder will hold harmless the Railroad from claims, costs and liability to the Builder's employees arising out of and in the course of their employment and while on the Railroad's premises or equipment except when traveling as revenue passengers on the Railroad's trains.

(f) (ACF Industries, Incorporated): The Builder warrants that the Equipment will be built in accordance with the requirements, specifications and standards set forth in Article 2 of the Conditional Sale Agreement to which this Schedule is attached (hereinafter called this Agreement) and warrants the Equipment will be free from defects in material (except as to specialties incorporated therein which were specified or supplied by the Railroad and not manufactured by the Builder) and

workmanship under normal use and service, the Builder's obligation under this Item 2 being limited to making good at its factory any part or parts of any unit of the Equipment which shall be returned to the Builder with transportation charges prepaid, within one year after the delivery of such unit to the Railroad, and which the Builder's examination shall disclose to its satisfaction to have been thus defective. The foregoing warranty of the Builder is expressly in lieu of all other warranties, express or implied, including any implied warranty of merchantability or fitness for a particular purpose, and of all other obligations or liabilities under Articles 2, 3, 4 and 14 of the Agreement, and the Builder neither assumes nor authorizes any person to assume for it any other liability in connection with the construction and delivery of the Equipment except as aforesaid.

The Builder further agrees that neither the inspection as provided in Article 3 of this Agreement nor any examination nor the acceptance of any units of the Equipment as provided in said Article 3 shall be deemed a waiver or a modification by the Owner-Trustee of any of its rights under this Item 2.

SCHEDULE B

Builder	Type	Quantity	Builder's Specifications	Builder's Plant	Railroad's Numbers (inclusive)	Unit Base Price	Total Base Price	Time and Place of Delivery
(a) General Motors Corporation (Electro-Motive Divison)	2300 h.p. GP-39-2 locomotive	29	8075	McCook, Illinois	3627-3655	$355,200	$10,300,800	Prior to April 30, 1975, at Builder's Plant
(b) FMC Corporation	60' 9" 100-ton box car with roller bearings AAR Mechanical Designation XM	400	Job 17620	Portland, Oregon	611000-611399	36,000	14,400,000	March-April, 1975, at Builder's Plant
(c) Pullman Incorporated (Pullman-Standard division)	60' 9" 100-ton box car with roller bearings; AAR Mechanical Designation XL	216	Lot Number 9783	Bessemer, Alabama	611400-611615	33,100	7,149,600	April-May, 1975, at Bessemer, Ala.

SCHEDULE B (Cont'd)

Builder	Type	Quantity	Builder's Specifications	Builder's Plant	Railroad's Numbers (inclusive)	Unit Base Price	Total Base Price	Time and Place of Delivery
(d) General Electric Company	U-36-C, 3600 h.p. locomotive; AAR Mechanical Designation C-C	6	3690E	Erie, Pennsylvania	8794-8799	$436,300	$ 2,617,800	Prior to March 1, 1975, at Erie, Pa.
(e) PACCAR Inc	52' 6", 70-ton insulated box car with roller bearing trucks, cushioned underframe, dual Air'Pak load dividers, 16' doors;	100	PC-339, as revised	Renton, Washington	522800-522899	37,100	3,710,000	Prior to March 1, 1975, at Builder's Plant
(f) ACF Industries, Incorporated	4600 cu. ft., 100-ton covered hopper car with roller bearing trucks and interior coating	400	11-01312, dated November 11, 1974	Huntington, West Virginia	314800-315199	30,000	12,000,000	February-March, 1975, at Russell, Ky.

RECORDATION No. 7822 Filed & Recorded
FEB 6 1975 10 55 AM
INTERSTATE COMMERCE COMMISSION

CONDITIONAL SALE AGREEMENT

Dated as of January 15, 1975

Among

GENERAL MOTORS CORPORATION
(Electro-Motive Division),
FMC CORPORATION,
PULLMAN INCORPORATED (Pullman Standard division)
GENERAL ELECTRIC COMPANY,
PACCAR INC,
ACF INDUSTRIES, INCORPORATED

and

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY

CONDITIONAL SALE AGREEMENT dated as of January 15, 1975, among each of the corporations named in Item 1 of Schedule A hereto and THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, a Delaware corporation (hereinafter called the Railroad).

WHEREAS each of the corporations named in Item 1 of Schedule A hereto severally have agreed to construct, sell and deliver to the Railroad, and the Railroad has agreed to purchase, the equipment described in Schedule B hereto (hereinafter called the Equipment);

NOW, THEREFORE, in consideration of the mutual promises, covenants and agreements hereinafter set forth, the parties hereto do hereby agree as follows:

ARTICLE 1. Certain Definitions; Obligations of Builders Several; Additional Agreements. The term "Vendor", whenever used in this Agreement, means, before any assignment of any of their rights hereunder, the respective corporations named in Item 1 of Schedule A hereto and any successor or successors for the time being to their respective manufacturing properties and businesses, and, after any such assignment, both any assignee or assignees for the time being of such particular assigned rights as regards such rights, and also any assignor as regards any rights hereunder that are retained or excluded from any assignment. Whenever the term "Vendor" refers to a corporation named in Item 1 of Schedule A hereto, such term shall mean any or all such corporations, as the context may require. The term "Builder", whenever used in this Agreement, means, both before and after any such assignment, each of the respective corporations (as to the units of Equipment to be constructed by such corporation and sold hereunder) named in Item 1 of Schedule A hereto and any successor or successors for the time being to their respective manufacturing properties and businesses.

The rights and obligations of the Builders under this Agreement are several in accordance with their interests and not joint. Accordingly, whenever this Agreement, by the use of such designation as "the Vendor", "such Builder" or other similar term, confers a right or imposes an obligation upon any corporation named in Item 1 of Schedule A hereto or its successor, such right or obligation shall be

construed to accrue to or to be enforceable against only the specific corporation furnishing the units of Equipment giving rise to such right or obligation and its successors as herein provided.

Additional Agreements, if any, set forth in Schedule A hereto shall be deemed to be a part of this Agreement as fully as though set forth in full in this instrument.

ARTICLE 2. Construction and Sale. Pursuant to this Agreement, each Builder shall construct the units of the Equipment to be constructed by it as described in Schedule B hereto (such Equipment with respect to each Builder being hereinafter sometimes called its Equipment) and will sell and deliver to the Railroad, and the Railroad will purchase from such Builder and accept delivery of and pay for (as hereinafter provided), such Equipment, each unit of which shall be constructed in accordance with the specifications set forth therefor in Schedule B hereto and in accordance with such modifications thereof as may be agreed upon in writing between such Builder and the Railroad (which specifications and modifications, if any, are hereinafter called the Specifications). The design, quality and component parts of each unit of the Equipment shall conform, on the date of completion of manufacture of each thereof, to all Department of Transportation and Interstate Commerce Commission requirements and specifications and to all standards recommended by the Association of American Railroads reasonably interpreted as being applicable to equipment of the character of such units of the Equipment and each unit of the Equipment (except to the extent, if any, referred to in Schedule A hereto and/or in Article 8 hereof) will be new railroad equipment.

ARTICLE 3. Inspection and Delivery. Each Builder will deliver the units of its Equipment to the Railroad at the place or places specified in Schedule B hereto (or if Schedule B does not specify a place or places, at the place or places designated from time to time by the Railroad), freight charges, if any, prepaid, in accordance with the delivery schedule set forth in Schedule B hereto; provided, however, that no Builder shall have any obligation to deliver any unit of its Equipment hereunder at any time after the commencement of any proceedings specified in clause (c) or (d) of Article 16 hereof or if any event of default (as described in Article 16 hereof), or event which with lapse of time and/or demand would constitute such an event of default, shall have occurred.

Each Builder's obligation as to time of delivery is subject, however, to delays resulting from causes beyond the Builder's reasonable control, including but not limited to acts of God, acts of government such as embargoes, priorities and allocations, war or war conditions, riot or civil commotion, sabotage, strikes, differences with workmen, accidents, fire, flood, explosion, damage to plant, equipment or facilities, delays in receiving necessary materials or delays of carriers or subcontractors.

Notwithstanding the preceding provisions of this Article 3, any Equipment not delivered, accepted and settled for pursuant to Article 4 hereof on or before August 31, 1975, shall be excluded herefrom. If any unit or units of Equipment shall be excluded from this Agreement pursuant to the immediately preceding sentence, the Builder or Builders of such unit or units and the Railroad shall execute an agreement supplemental hereto limiting this Agreement to the units of Equipment not so excluded herefrom. If a Builder's failure to deliver Equipment so excluded from this Agreement resulted from one or more of the causes set forth in the immediately preceding paragraph, the Railroad shall nevertheless be obligated to accept such Equipment and pay the full purchase price therefor, determined as provided in this Agreement, if and when such Equipment shall be completed and delivered by such Builder, such payment to be in cash on the delivery of such Equipment, either directly or, in case the Railroad shall arrange therefor, by means of a conditional sale agreement, equipment trust or such other appropriate method of financing as the Railroad shall determine and as shall be reasonably acceptable to such Builder.

During construction, the Equipment shall be subject to inspection and approval by the authorized inspectors of the Railroad and each Builder shall grant to such authorized inspectors reasonable access to its plant. Each Builder agrees to inspect all materials used in the construction of the Equipment in accordance with the standard quality control practices of such Builder. Upon completion of each unit or of a number of units of the Equipment, such unit or units shall be presented to an inspector of the Railroad for inspection at the place specified for delivery of such unit or units, and if each such unit conforms to the Specifications, requirements and standards applicable thereto, such inspector or an authorized representative of the Railroad shall execute and deliver to such Builder a certificate of acceptance (hereinafter called the Certificate of Accep-

tance) stating that such unit or units have been inspected and accepted on behalf of the Railroad and are marked in accordance with Article 7 hereof; provided, however, that such Builder shall not thereby be relieved of its warranty referred to in Article 14 hereof.

On delivery of each such unit hereunder at the place specified for delivery, the Railroad will assume the responsibility and risk of, and shall not be released from its obligations hereunder in the event of, any damage to or the destruction or loss of such unit; provided, however, that such delivery shall not thereby relieve a Builder of its warranty referred to in Article 14 hereof.

ARTICLE 4. Purchase Price and Payment. The base price or prices per unit of the Equipment are set forth in Schedule B hereto. Such base price or prices are subject to such increase or decrease as may be agreed to by the Builder thereof and the Railroad. The term "Purchase Price" as used herein shall mean the base price or prices as so increased or decreased. If the aggregate Purchase Price of Equipment for which settlement has been made under this Agreement is in an amount not less than $50,250,000, the Railroad may, at its option, exclude from this Agreement any unit or units of Equipment for which settlement has not been made and the appropriate Builder or Builders of such unit or units (and any assignee of such Builder or Builders) shall, upon request of the Railroad enter into an agreement supplemental hereto evidencing such exclusion. The Railroad agrees to purchase any such unit or units so excluded from this Agreement and to pay the Builder in cash on the date such unit or units would otherwise have been settled for under this Agreement either directly, or, if the Builder and the Railroad shall mutually agree, by means of a conditional sale, equipment trust or other appropriate method of financing.

For the purpose of making settlement, the Equipment shall be divided into such number of groups (not more than three) of units of the Equipment, delivered to and accepted by the Railroad (each such group being hereinafter called a Group), as the respective Builder, the Railroad and the Vendor may agree to.

The Railroad hereby acknowledges itself to be indebted to the Vendor in the amount of, and hereby promises to pay in cash to the Vendor at such place as the Vendor

may designate, the Purchase Price of the Equipment, as follows:

(a) on each Closing Date (as hereinafter defined) the amount, if any, by which (x) the aggregate Purchase Price of all units of the Equipment for which settlement has theretofore and is then being made, as stated in the invoice or invoices presented in respect of such Closing Date (said invoiced prices being hereinafter called the Invoiced Purchase Prices), exceeds (y) the sum of $50,000,000 and any amount or amounts previously paid or payable with respect to the Invoiced Purchase Prices pursuant to this subparagraph (a); and

(b) in 15 consecutive equal (to the nearest multiple of $1,000, except for appropriate adjustment of the final instalment in case the amount payable pursuant to this subparagraph (b) shall not, when divided by 15, result in an amount ending in a multiple of $1,000) annual instalments, as hereinafter provided, an amount equal to the aggregate of the Invoiced Purchase Prices for all the Equipment less the amount paid or payable with respect thereto pursuant to subparagraph (a) of this paragraph (the aggregate of said instalments being hereinafter called the Conditional Sale Indebtedness).

In the event that on any Closing Date the final Purchase Price of any Group has not been finally determined, the invoice presented may be a preliminary invoice, subject to upward adjustment upon determination of the final Purchase Price, and a supplemental invoice may be presented by the Builder at least ten days prior to any subsequent Closing Date for settlement on such subsequent Closing Date for any increase in the Purchase Price; it being understood and agreed by the Builders that any preliminary invoice or invoices presented by the Builders in respect of any Group shall be in amount not in excess of the final Purchase Price of such Group.

The instalments of the Conditional Sale Indebtedness payable pursuant to subparagraph (b) of the third paragraph of this Article 4 shall be payable annually on May 15 in each year commencing on May 15, 1976, to and including May 15, 1990. The unpaid portion of the Conditional Sale Indebtedness shall bear interest from the respective Closing Dates on which such indebtedness was incurred at the rate of 9-3/4% per annum. Such interest shall be payable, to the extent accrued, on May 15 and November 15 in each year, commencing May 15, 1975.

The term "Closing Date" with respect to any Group of the Equipment shall mean March 3, 1975, and such other dates (after March 3, 1975, and prior to August 31, 1975,) not more than 10 business days following presentation by a Builder to the Railroad of the invoice and the Certificate or Certificates of Acceptance for such Group, as shall be fixed by the Railroad by written notice delivered to the Vendor at least six business days prior to the Closing Date designated therein; it being understood and agreed, however, that the aggregate Purchase Price of all Equipment settled for on Closing Dates prior to April 1, 1975, shall not exceed $26,000,000. The term "business days" as used herein means calendar days, excluding Saturdays, Sundays and any other day on which banking institutions in Chicago, Illinois, or New York, New York, are authorized to remain closed.

All interest under this Agreement shall be calculated on the basis of a 360-day year of twelve 30-day months.

The Railroad will pay, to the extent legally enforceable, interest at the rate of 10-3/4% per annum upon all amounts remaining unpaid after the same shall have become due and payable pursuant to the terms hereof, anything herein to the contrary notwithstanding.

All payments provided for in this Agreement shall be made in such coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts. Except as provided in Article 8 hereof, the Railroad shall not have the privilege of prepaying any instalment of its indebtedness hereunder prior to the date it becomes due.

In the event the Vendor, pursuant to Article 15 hereof, assigns the right to receive the payments herein provided to be made by the Railroad, the assignee thereof may request the Railroad to make and the Railroad shall make such payments to it at such address as shall be supplied to the Railroad by the assignee.

ARTICLE 5. Taxes. All payments to be made by the Railroad hereunder will be free of expense to the Vendor for collection or other charges and will be free of expense to the Vendor with respect to the amount of any local, state, federal or foreign taxes (other than net income, gross receipts [except gross receipts taxes in the nature of or in lieu of sales or use taxes], excess profits and similar taxes) or license fees, assessments, charges, fines or penal-

ties hereafter levied or imposed upon or in connection with or measured by, this Agreement or any sale, use, payment, shipment, delivery or transfer of title under the terms hereof (all such expenses, taxes, license fees, assessments, charges, fines and penalties being hereinafter called impositions), all of which impositions the Railroad assumes and agrees to pay on demand. The Railroad will also pay promptly all impositions which may be imposed upon the Equipment delivered to it or for the use or operation thereof or upon the earnings arising therefrom or upon the Vendor solely by reason of its ownership thereof and will keep at all times all and every part of the Equipment free and clear of all impositions which might in any way affect the title of the Vendor or result in a lien upon any part of the Equipment; provided, however, that the Railroad shall be under no obligation to pay any impositions of any kind so long as it is contesting in good faith and by appropriate legal proceedings such impositions and the nonpayment thereof does not, in the opinion of the Vendor, adversely affect the property or rights of the Vendor in or to the Equipment or otherwise under this Agreement. If any such impositions shall have been charged or levied against the Vendor directly and paid by the Vendor, the Railroad shall reimburse the Vendor upon presentation of an invoice therefor, and any amounts so paid by the Vendor shall be secured by and under this Agreement; provided, however, that the Railroad shall not be obligated to reimburse the Vendor for any impositions so paid unless the Vendor shall have been legally liable with respect thereto (as evidenced by an opinion of counsel for the Vendor) or unless the Railroad shall have approved the payment thereof.

ARTICLE 6. Title to the Equipment. The Vendor shall and hereby does retain the full legal title to and property in the Equipment until the Railroad shall have made all its payments under this Agreement and shall have kept and performed all its agreements herein contained, notwithstanding the delivery of the Equipment to and the possession and use thereof by the Railroad as provided in this Agreement. Any and all additions to the Equipment and any and all replacements of the Equipment and of parts thereof and additions thereto shall constitute accessions to the Equipment and shall be subject to all the terms and conditions of this Agreement and included in the term "Equipment" as used in this Agreement.

Except as otherwise specifically provided in Article 8 hereof, when and only when the full indebtedness in

respect of the Purchase Price of the Equipment, together with interest and all other payments as herein provided, shall have been paid, and all the Railroad's obligations herein contained shall have been performed by the Railroad, absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Railroad without further transfer or action on the part of the Vendor. However, the Vendor, if so requested by the Railroad at that time, will (a) execute a bill or bills of sale for the Equipment transferring its title thereto and property therein to the Railroad, or upon its order, free of all liens, security interests and other encumbrances created or retained hereby and deliver such bill or bills of sale to the Railroad at its address referred to in Article 21 hereof, (b) execute and deliver at the same place, for filing, recording or depositing in all necessary public offices, such instrument or instruments in writing as may be necessary or appropriate in order then to make clear upon the public records the title of the Railroad to the to the Equipment and (c) pay to the Railroad any money paid to the Vendor pursuant to Article 8 hereof and not theretofore applied as therein provided. The Railroad hereby waives and releases any and all rights, existing or that may be acquired, in or to the payment of any penalty, forfeit or damages for failure to execute and deliver such bill or bills of sale or instrument or instruments or to file any certificate of payment in compliance with any law or statute requiring the filing of the same, except for failure to execute and deliver such bill or bills of sale or instrument or instruments or to file such certificate within a reasonable time after written demand by the Railroad.

ARTICLE 7. Marking of the Equipment. The Railroad will cause each unit of the Equipment to be kept numbered with its identifying number as set forth in Schedule B hereto, or in the case of Equipment not there listed such identifying number as shall be set forth in any amendment or supplement hereto extending this Agreement to cover such Equipment, and will keep and maintain, plainly, distinctly, permanently and conspicuously marked on each side of each unit, in letters not less than one inch in height, the words "Ownership subject to a Security Interest Filed under the Interstate Commerce Act, Section 20c" or other appropriate markings approved by the Vendor, with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the Vendor's title to and property in the Equipment and its rights under this Agreement. The

Railroad will not place any such unit in operation or exercise any control or dominion over the same until such markings have been made thereon and will replace promptly any such markings which may be removed, defaced or destroyed. The Railroad will not change the number of any unit of the Equipment except in accordance with a statement of new number or numbers to be substituted therefor, which statement previously shall have been filed with the Vendor by the Railroad and filed, recorded and deposited by the Railroad in all public offices where this Agreement shall have been filed, recorded and deposited.

Except as provided in the immediately preceding paragraph, the Railroad will not allow the name of any person, association or corporation to be placed on any unit of the Equipment as a designation that might be interpreted as a claim of ownership; provided, however, that the Railroad may cause the Equipment to be lettered with the names or initials or other insignia of the Railroad or its affiliates.

ARTICLE 8. Casualty Occurrences. In the event that any unit of the Equipment shall be worn out, lost, stolen, destroyed, irreparably damaged or otherwise rendered permanently unfit for use from any cause whatsoever, or taken or requisitioned by condemnation or otherwise (such occurrences being hereinafter called Casualty Occurrences), the Railroad shall promptly (after it has knowledge of such Casualty Occurrence) and fully inform the Vendor in regard thereto. When the aggregate Casualty Value (as defined herein) of all units having suffered a Casualty Occurrence (exclusive of units having suffered a Casualty Occurrence with respect to which a payment shall have been made to the Vendor pursuant to this Article 8) hereunder shall exceed $250,000 (or such lesser amount as the Railroad may elect), the Railroad, within 90 days after the Railroad has knowledge of such event, shall file with the Vendor a certificate of an officer of the Railroad setting forth the Casualty Value of each unit of the Equipment having suffered a Casualty Occurrence and shall pay to the Vendor a sum equal to the aggregate Casualty Value as of the date of such payment of such unit or units of the Equipment having suffered a Casualty Occurrence, together with interest on such sum so being prepaid accrued to the date of such prepayment, but without premium, (the Railroad hereby agreeing to make such payment of accrued interest to the Vendor at the time it makes payment of such Casualty Value to the Vendor); provided, however, if and so long as no event of default

shall have occurred and be continuing hereunder, in lieu of making all or any portion of such payment to the Vendor, the Railroad may, on or before the expiration of such 90-day period, cause to be transferred to the Vendor a replacement unit or units of standard gauge railroad equipment (other than passenger or work equipment of types other than locomotives) and receive credit against the Casualty Value payment it would otherwise have been required to make in an amount equal to the value threof. The value of any unit or units of replacement equipment shall be equal to the cost thereof, if new, as specified in the invoice therefor delivered to the Vendor or, if not new, the lesser of (y) the fair market value thereof or (z) the original cost thereof less depreciation at a rate equal to 1/15th of such cost for each year in service, all as set forth in a certificate of an officer of the Railroad delivered to the Vendor at the time of such replacement. Any unit of replacement equipment shall have a remaining useful life (as evidenced by a certificate of an operating officer at the Railroad) at least as long as that which the Equipment being replaced would have had but for the Casualty Occurrence. In case any money is applied to prepay indebtedness, it shall be so applied, together with the interest due thereon, on the business day next following receipt by the Vendor of the appropriate payment, to reduce instalments of the aggregate Conditional Sale Indebtedness thereafter falling due in the inverse order of maturity thereof without premium.

The Casualty Value of each unit of the Equipment (other than a replacement unit) shall be deemed to be that amount which bears the same ratio to the original Purchase Price thereof (less, in the event that the Railroad shall have made any payment or payments under the provisions of subparagraph (a) of the third paragraph of Article 4 hereof, an amount which bears the same ratio to the aggregate of all such payments as the original Purchase Price of such unit bears to the original aggregate Purchase Price of all the Equipment) as the unpaid Conditional Sale Indebtedness (without giving effect to any prepayments then or theretofore made pursuant to this Article 8) as of the date payment is made with respect to such Casualty Occurrence bears to the original Conditional Sale Indebtedness. The Casualty Value of each replacement unit shall be deemed to be that amount which bears the same ratio to the portion of the cost thereof paid by the Vendor as the unpaid Conditional Sale Indebtedness ness (without giving effect to any prepayments then or theretofore made pursuant to this Article 8) as of the date payment

is made with respect to such Casualty Occurrence bears to the unpaid Conditional Sale Indebtedness (without giving effect to any such prepayments) as of the date of acquisition by the Vendor of such replacement unit.

The Railroad will cause any replacement unit or units to be marked as provided in Article 7 hereof. Any and all such replacements of Equipment shall constitute accessions to the Equipment and shall be subject to all appropriate terms and conditions of this Agreement as though part of the original Equipment delivered hereunder and shall be included in the term "Equipment" as used in this Agreement. Title to all such replacement units shall be free and clear of all liens and encumbrances except the liens permitted by the second paragraph of Article 12 hereof and shall be taken initially and shall remain in the name of the Vendor subject to the provisions hereof, and the Railroad shall execute, acknowledge, deliver, file, record or deposit all such documents and do any and all such acts as may be necessary to cause such replacement units to come under and be subject to this Agreement. All such replacement units shall be guaranteed and warranted in like manner as is customary at the time for similar equipment. Whenever the Railroad shall cause to be transferred to the Vendor a unit or units of replacement Equipment, the Railroad shall deliver to the Vendor an executed counterpart of an opinion of counsel covering the matters set forth in this paragraph.

In order to facilitate the sale or other disposition of any Equipment suffering a Casualty Occurrence, in respect of which the Railroad shall have paid to the Vendor the Casualty Value and/or shall have caused to be transferred to the Vendor a unit or units of replacement Equipment, the Vendor shall, upon request of the Railroad, execute and deliver to the Railroad or the Railroad's vendee, assignee or nominee, a bill of sale (without warranties) for such Equipment, and such other documents as may be required to release such Equipment from the terms and scope of this Agreement, in such form as may be reasonably requested by the Railroad.

The Railroad will at all times prior to the payment in full of the Conditional Sale Indebtedness together with interest thereon and all other payments required hereby, at its own expense, cause to be carried and maintained insurance in respect of the Equipment consisting of locomotives at the time subject hereto, and public liability insurance,

in amounts and against risks customarily insured against by railroad companies on similar equipment, and in any event in amounts and against risks comparable to those insured against by the Railroad on equipment owned by it; provided, however, that the Railroad may act as self-insurer in respect of losses and damage not exceeding $3,000,000 in respect of any single occurrence.

ARTICLE 9. Maintenance; Compliance with Laws and Rules. The Railroad will at all times maintain the Equipment or cause the Equipment to be maintained in good order and repair at its own expense.

During the term of this Agreement, the Railroad will at all times comply in all respects with all laws of the jurisdictions in which its operations involving the Equipment may extend, with the interchange rules of the Asociation of American Railroads and with all lawful rules of the Department of Transportation, Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Equipment, to the extent that such laws and rules affect the title, operation or use of the Equipment, and in the event that such laws or rules require any alteration, replacement or addition of any part on any unit of the Equipment, the Railroad will conform therewith, at its own expense; provided, however, that the Railroad may, in good faith, contest the validity or application of any such law or rule in any reasonable manner which does not, in the opinion of the Vendor, adversely affect the property or rights of the Vendor under this Agreement.

ARTICLE 10. Reports and Inspections. On or before March 31 in each year, commencing with the calendar year 1976, the Railroad shall furnish to the Vendor an accurate statement signed by an officer of the Railroad (a) setting forth as at the preceding December 31 the amount, description and numbers of all units of the Equipment that have suffered a Casualty Occurrence during the preceding calendar year (or since the date of this Agreement in the case of the first such statement) or that have been withdrawn from use pending repairs (other than running repairs) and such other information regarding the condition and state of repair of the Equipment as the Vendor may reasonably request and (b) stating that, in the case of all Equipment repaired or repainted during the period covered by such statement, the numbers and markings required by Article 7 hereof have

been preserved or replaced. During the term of this Agreement, the Vendor shall have the right, by its agents, to inspect the Equipment and the Railroad's records with respect thereto at such times and locations as the Vendor may reasonably request.

The Railroad shall furnish (i) as soon as available and in any event within 60 days after the end of each quarterly period, except the last, of each fiscal year, a balance sheet of the Railroad (as filed with the Interstate Commerce Commission (hereinafter called the ICC)) as at the end of such period, and an income statement of the Railroad as filed with the ICC for the period beginning on the first day of such fiscal year and ending on the date of such balance sheet, setting forth comparative figures for the corresponding period of the preceding fiscal year, all in reasonable detail and certified by the principal accounting officer of the Railroad, and (ii) as soon as available and in any event within 120 days after the end of each fiscal year, a copy of the Railroad's annual report as filed with the ICC, which shall include the balance sheet, income statement and statement of retained income of the Railroad certified by the principal accounting officer of the Railroad and which shall be accompanied by a letter from the independent accountants for Santa Fe Industries, Inc., the parent of the Railroad, stating that such financial statements, restated to generally accepted accounting principles, were included in the certified consolidated financial statement of Santa Fe Industries, Inc., and that such certified financial statements are not qualified with respect to the Railroad and, in the event a restatement to generally accepted accounting principles is required, such letter shall be accompanied by a schedule which shall describe such restatement in reasonable detail.

ARTICLE 11. Possession and Use. The Railroad, so long as an event of default shall not have occurred under this Agreement and be continuing, shall be entitled to the possession of the Equipment and the use thereof upon the lines of railroad owned or operated by it either alone or jointly with others and whether under lease or otherwise, or upon the lines of railroad owned or operated by any railroad company controlled by, or under common control with, the Railroad, or over which it has trackage rights, or upon connecting and other carriers in the usual interchange of traffic, from and after delivery of the Equipment by the Builder to the Railroad, but only upon and subject to all the terms and conditions of this Agreement.

ARTICLE 12. Prohibition Against Liens. The Railroad will pay or discharge any and all sums claimed by any party from, through or under the Railroad or its successors or assigns which, if unpaid, might become a lien, charge or security interest on the Equipment, or any unit thereof, equal or superior to the Vendor's title thereto or property therein; provided, however, that the Railroad shall be under no obligation to pay or discharge any such claim so long as it is contesting in good faith and by appropriate legal proceedings such claim and the nonpayment thereof does not, in the opinion of the Vendor, adversely affect the property or rights of the Vendor in or to the Equipment or otherwise under this Agreement. Any amounts paid by the Vendor in discharge of liens, charges or security interests upon the Equipment shall be secured by and under this Agreement.

This covenant will not be deemed breached by reason of liens for taxes, assessments or governmental charges or levies, in each case not due and delinquent, or undetermined or inchoate materialmen's, mechanics', workmen's, repairmen's or other like liens arising in the ordinary course of business and, in each case, not delinquent.

ARTICLE 13. Railroad's Indemnities. The Railroad agrees to indemnify, protect and hold harmless the Vendor from and against all losses, damages, injuries, liabilities, claims and demands whatsoever, regardless of the cause thereof, and expenses in connection therewith, including counsel fees, arising out of retention by the Vendor of title to the Equipment, the use and operation thereof by the Railroad during the period when title thereto remains in the Vendor or the transfer of title to the Equipment by the Vendor pursuant to any of the provisions of this Agreement, except, however, any losses, damages, injuries, liabilities, claims and demands whatsoever arising out of any tort, breach of warranty or failure to perform any covenant hereunder by any Builder. This covenant of indemnity shall continue in full force and effect notwithstanding the full payment of all sums due under this Agreement, or the satisfaction, discharge or termination of this Agreement in any manner whatsoever.

ARTICLE 14. Patent Indemnities; Builder's Warranty of Material and Workmanship. Except in cases of articles or materials specified by the Railroad and not manufactured by a Builder and in cases of designs, systems, processes, formulae or combinations specified by the Railroad and not

developed or purported to be developed by any Builder, each Builder agrees to indemnify, protect and hold harmless the Railroad from and against any and all liability, claims, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Railroad, its assigns or the users of its respective Equipment because of the use in or about the construction or operation of any of the Equipment of any design, system, process, formula, combination, article or material which infringes or is claimed to infringe on any patent or other right. The Railroad likewise will indemnify, protect and hold harmless the Vendor from and against any and all liability, claims, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Vendor because of the use in or about the construction or operation of any of the Equipment of any article or material specified by the Railroad and not manufactured by a Builder or of any design, system, process, formula or combination specified by the Railroad and not developed or purported to be developed by a Builder which infringes or is claimed to infringe on any patent or other right. Each Builder agrees to and hereby does, to the extent legally possible without impairing any claim, right or cause of action hereinafter referred to, assign, set over and deliver to the Railroad every claim, right and cause of action which such Builder has or hereafter shall have against the seller or sellers of any designs, systems, processes, formulae, combinations, articles or materials specified by the Railroad and purchased or otherwise acquired by such Builder for use in or about the construction or operation of any of the Equipment on the ground that any such design, system, process, formula, combination, article or material or operation thereof infringes or is claimed to infringe on any patent or other right. Each Builder further agrees to execute and deliver to the Railroad or the users of the Equipment all and every such further assurance as may be reasonably requested by the Railroad more fully to effectuate the assignment and delivery of every such claim, right and cause of action. Each Builder will give notice to the Railroad of any claim known to such Builder from which liability may be charged against the Railroad hereunder and the Railroad will give notice to the appropriate Builder of any claim known to the Railroad from which liability may be charged against any Builder hereunder. Such covenants of indemnity shall continue in full force and effect notwithstanding the full payment of all sums due under this Agreement, or the satisfaction,

discharge or termination of this Agreement in any manner whatsoever.

Each Builder's warranty of material and workmanship is set forth in Schedule A hereto.

ARTICLE 15. Assignments. The Railroad will not sell, assign, transfer or otherwise dispose of its rights under this Agreement or, except as provided in Article 11 hereof, transfer the right to possession of any unit of the Equipment without first obtaining the written consent of the Vendor. A sale, assignment, transfer or disposition to a railroad company organized under the laws of the United States of America or any of the states thereof which shall acquire all or substantially all the lines of railroad of the Railroad, and which, by execution of an appropriate instrument satisfactory to the Vendor, shall assume and agree to perform each of, and all, the obligations and covenants of the Railroad under this Agreement, shall not be deemed a breach of this covenant.

All or any of the rights, benefits and advantages of the Vendor under this Agreement, including the right to receive the payments herein provided to be made by the Railroad, may be assigned by the Vendor and reassigned by any assignee at any time or from time to time. No such assignment shall subject any assignee to, or relieve any Builder from, any of the obligations of such Builder to construct and deliver the Equipment in accordance with this Agreement or to respond to its respective warranties and indemnities contained or referred to in Article 14 hereof, or relieve the Railroad of any of its obligations to such Builders under Articles 2, 3, 4, 5, 13 and 14 hereof, Schedule A hereto and this Article 15 or of any other obligation which, according to its terms or context, is intended to survive an assignment.

Upon any such assignment either the assignor or the assignee shall give written notice to the Railroad, together with a counterpart or copy of such assignment, stating the identity and post office address of the assignee, and such assignee shall by virtue of such assignment acquire all the assignor's right, title and interest in and to the Equipment and this Agreement, or in and to a portion thereof, as the case may be, subject only to such reservations as may be contained in such assignment. From and after the receipt by the Railroadd of the notification of any such

assignment, all payments thereafter to be made by the Railroad under this Agreement shall, to the extent so assigned, be made to the assignee in such manner as it may direct.

The Railroad recognizes that it is the custom of railroad equipment manufacturers to assign conditional sale agreements and understands that the assignment of this Agreement, or of some of or all the rights of the Vendor hereunder, is contemplated. The Railroad expressly represents, for the purpose of assurance to any person, firm or corporation considering the acquisition of this Agreement or of all or any of the rights of the Vendor hereunder and for the purposes of inducing such acquisition, that in the event of such assignment by the Vendor as hereinbefore provided, the rights of such assignee to the entire unpaid indebtedness in respect of the Purchase Price or such part thereof as may be assigned, together with interest thereon, as well as any other rights hereunder which may be so assigned, shall not be subject to any defense, setoff, counterclaim or recoupment whatsoever arising out of any breach of any obligation of a Builder with respect to the Equipment or the manufacture, construction, delivery or warranty thereof, or with respect to any indemnity herein contained, nor subject to any defense, setoff, counterclaim or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to the Railroad by a Builder. Any and all such obligations, howsoever arising, shall be and remain enforceable by the Railroad against and only against the respective Builders.

The Railroad will (a) in connection with each settlement for the Equipment subsequent to such assignment, deliver to the assignee, at least five business days prior to the Closing Date for the Group fixed in the notice by the Railroad, all documents required by the terms of such assignment to be delivered to such assignee in connection with such settlement, in such number of counterparts or copies as may reasonably be requested, except for any opinion of counsel for such assignee, and (b) furnish to such assignee such number of counterparts of any other certificate or paper required by the Vendor as may reasonably be requested.

If this Agreement shall have been assigned by the Builders and the assignee shall not make payment to a Builder with respect to units of its Equipment as provided in the instrument making such assignment, such Builder will promptly notify the Railroad of such event and, if such

amount shall not have been previously paid by such assignee, the Railroad will, not later than 90 days after the date such payment was due, pay or cause to be paid to such Builder the aggregate unpaid Purchase Price of such units of its Equipment, together with interest from the day such payment was due to the date of payment by the Railroad at the highest prime rate of interest charged by any of the four New York City banks having the largest total assets, in effect on the date such payment was due.

ARTICLE 16. Defaults. In the event that any one or more of the following events of default shall occur and be continuing, to wit:

(a) the Railroad shall fail to pay in full any indebtedness in respect of the Purchase Price of the Equipment or any other sum payable by the Railroad as provided in this Agreement within ten days after payment thereof shall be due hereunder; or

(b) the Railroad shall, for more than 30 days after the Vendor shall have demanded in writing performance thereof, fail or refuse to comply with any covenant, agreement, term or provision of this Agreement, or of any agreement entered into concurrently herewith relating to the financing of the Equipment on its part to be kept or performed or to make provision satisfactory to the Vendor for such compliance; or

(c) a petition for reorganization under Section 77 of the Bankruptcy Act, as now constituted or as said Section 77 may be hereafter amended, shall be filed by or against the Railroad and, unless such petition shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Railroad under this Agreement shall not have been (and shall not continue to have been) duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees appointed (whether or not subject to ratification) in such proceedings in such manner that such obligations shall have the same status as obligations incurred by such trustee or trustees, within 30 days after such appointment, if any, or 60 days after such petition shall have been filed, whichever shall be earlier; or

(d) any other proceedings shall be commenced by or against the Railroad for any relief under any bankruptcy or insolvency law, or law relating to the relief of debtors, readjustments of indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which does not permit any readjustment of the indebtedness payable hereunder), and, unless such proceedings shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Railroad under this Agreement shall not have been (and shall not continue to have been) duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed (whether or not subject to ratification) for the Railroad or for its property in connection with any such proceedings in such manner that such obligations shall have the same status as obligations incurred by such trustee or trustees or receiver or receivers, within 30 days after such appointment, if any, or 60 days after such proceedings shall have been commenced, whichever shall be earlier; or

(e) the Railroad shall make or suffer any unauthorized assignment or transfer of this Agreement or any interest herein or any unauthorized transfer of the right to possession of any unit of the Equipment;

then at any time after the occurrence of such an event of default the Vendor may, upon written notice to the Railroad and upon compliance with any mandatory legal requirements then in force and applicable to such action by the Vendor, declare (hereinafter called a Declaration of Default) the entire indebtedness in respect of the Purchase Price of the Equipment, together with the interest thereon then accrued and unpaid, immediately due and payable, without further demand, and thereafter the aggregate of the unpaid balance of such indebtedness and interest shall bear interest from the date of such Declaration of Default at the rate per annum specified in Article 4 hereof as being applicable to amounts remaining unpaid after becoming due and payable, to the extent legally enforceable. The Vendor shall thereupon be entitled to recover judgment for the entire unpaid balance of the indebtedness in respect of the Purchase Price of the Equipment so payable, with interest as aforesaid, and to collect such judgment out of any property of

the Railroad wherever situated. The Railroad shall promptly notify the Vendor of any event which has come to its attention which constitutes, or which with the giving of notice and/or lapse of time could constitute, an event of default under this Agreement.

The Vendor may at its election waive any such event of default and its consequences and rescind and annul any Declaration of Default by notice to the Railroad in writing to that effect, and thereupon the respective rights of the parties shall be as they would have been if no such event of default had occurred and no Declaration of Default had been made. Notwithstanding the provisions of this paragraph, it is expressly understood and agreed by the Railroad that time is of the essence of this Agreement and that no such waiver, rescission or annulment shall extend to or affect any other or subsequent default or impair any rights or remedies consequent thereon.

ARTICLE 17. Remedies. At any time during the continuance of a Declaration of Default, the Vendor may, subject to compliance with any mandatory legal requirements then in force and applicable to the action to be taken by the Vendor, take or cause to be taken by its agent or agents immediate possession of the Equipment, or one or more of the units thereof, without liability to return to the Railroad any sums theretofore paid and free from all claims whatsoever, except as hereinafter in this Article 17 expressly provided, and may remove the same from possession and use of the Railroad or any other person and for such purpose may enter upon the Railroad's premises or any other premises where the Equipment may be located and may use and employ in connection with such removal any supplies, services and aids and any available trackage and other facilities or means of the Railroad.

In case the Vendor shall demand possession of the Equipment pursuant to this Agreement and shall reasonably designate a point or points upon the premises of the Railroad for the delivery of the Equipment to the Vendor, the Railroad shall, at its own expense, forthwith and in the usual manner (including, but not by way of limitation, giving prompt telegraphic and written notice to the Association of American Railroads and all railroads to which any part of the Equipment has been interchanged to return the Equipment so interchanged), cause (a) the Equipment to be moved to such point or points on its lines as shall

be designated by the Vendor and shall there deliver the Equipment or cause it to be delivered to the Vendor and (b) the Equipment to be moved to such interchange point or points of the Railroad as shall be designated by the Vendor upon any sale, lease or other disposal of all or any part of the Equipment by the Vendor. At the option of the Vendor, the Vendor may keep the Equipment on any of the lines or premises of the Railroad until the Vendor shall have leased, sold or otherwise disposed of the same, and for such purpose the Railroad agrees to furnish, without charge for rent or storage, the necessary facilities at any point or points selected by the Vendor reasonably convenient to the Railroad and, at the Railroad's risk, to permit inspection of the Equipment by the Vendor, the Vendor's representatives and prospective purchasers and users. This agreement to deliver the Equipment and furnish facilities as hereinbefore provided is of the essence of the agreement between the parties, and, upon application to any court of equity having jurisdiction in the premises, the Vendor shall be entitled to a decree against the Railroad requiring specific performance hereof. The Railroad hereby expressly waives any and all claims against the Vendor and its agent or agents for damages of whatever nature in connection with any retaking of any unit of the Equipment in any reasonable manner.

At any time during the continuance of a Declaration of Default, the Vendor (after retaking possession of the Equipment as hereinbefore in this Article 17 provided) may at its election and upon such notice as is hereinafter set forth retain the Equipment in satisfaction of the entire indebtedness in respect of the Purchase Price of the Equipment and make such disposition thereof as the Vendor shall deem fit. Written notice of the Vendor's election to retain the Equipment shall be given to the Railroad by telegram or registered mail, addressed as provided in Article 21 hereof, and to any other persons to whom the law may require notice, within 30 days after such Declaration of Default. In the event that the Vendor should elect to retain the Equipment and no objection is made thereto within the 30-day period described in the second proviso below, all the Railroad's rights in the Equipment shall thereupon terminate and all payments made by the Railroad may be retained by the Vendor as compensation for the use of the Equipment by the Railroad; <u>provided, however</u>, that if the Railroad, before the expiration of the 30-day period described in the proviso below,

should pay or cause to be paid to the Vendor the total unpaid balance of the indebtedness in respect of the Purchase Price of the Equipment, together with interest thereon accrued and unpaid and all other payments due under this Agreement as well as expenses of the Vendor in retaking possession of, removing and storing the Equipment and the Vendor's reasonable attorneys' fees, then in such event absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Railroad; provided, further, that if the Railroad or any other persons notified under the terms of this paragraph object in writing to the Vendor within 30 days from the receipt of notice of the Vendor's election to retain the Equipment, then the Vendor may not so retain the Equipment, but shall sell, lease or otherwise dispose of it or continue to hold it pending sale, lease or other disposition as hereinafter provided or as may otherwise be permitted by law. If the Vendor shall have given no notice to retain as hereinabove provided or notice of intention to dispose of the Equipment in any other manner, it shall be deemed to have elected to sell the Equipment in accordance with the provisions of this Article 17.

At any time during the continuance of a Declaration of Default, the Vendor, with or without retaking possession thereof, at its election and upon reasonable notice to the Railroad and to any other persons to whom the law may require notice of the time and place, may sell the Equipment, or any unit thereof, free from any and all claims of the Railroad or any other party claiming from, through or under the Railroad, at law or in equity, at public or private sale and with or without advertisement as the Vendor may determine; provided, however, that if, prior to such sale and prior to the making of a contract for such sale, the Railroad should tender full payment of the total unpaid balance of the indebtedness in respect of the Purchase Price of the Equipment, together with interest thereon accrued and unpaid and all other payments due under this Agreement as well as expenses of the Vendor in retaking possession of, removing, storing, holding and preparing the Equipment for, and otherwise arranging for, the sale and the Vendor's reasonable attorneys' fees, then in such event absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Railroad. The proceeds of such sale, less the attorneys' fees and any other expenses incurred by the Vendor in retaking possession of, removing, storing,

holding, preparing for sale and selling the Equipment, shall be credited on the amount due to the Vendor under the provisions of this Agreement.

Any sale hereunder may be held or conducted at such place or places and at such time or times as the Vendor may specify, in one lot and as an entirety or in separate lots and without the necessity of gathering at the place of sale the property to be sold, and in general in such manner as the Vendor may determine. The Vendor or the Railroad may bid for and become the purchaser of the Equipment, or any unit thereof, so offered for sale. The Railroad shall be given written notice of such sale not less than ten days prior thereto, by telegram or registered mail addressed to the Railroad as provided in Article 21 hereof. If such sale shall be a private sale (which shall be deemed to mean only a sale where an advertisement for bids has not been published in a newspaper of general circulation or a sale where less than 40 railroads have been solicited in writing to submit bids), it shall be subject to the right of the Railroad to purchase or provide a purchaser, within ten days after notice of the proposed sale price, at the same price offered by the intending purchaser or a better price. In the event that the Vendor shall be the purchaser of the Equipment, it shall not be accountable to the Railroad (except to the extent of surplus money received as hereinafter provided in this Article 17), and in payment of the purchase price therefor the Vendor shall be entitled to have credited on account thereof all or any part of the sums due to the Vendor from the Railroad hereunder. From and after the date of any such sale, the Railroad shall pay to the Vendor the per diem interchange for each unit of Equipment which shall not have been assembled, as hereinabove provided, by the date of such sale for each day from the date of such sale to the date of delivery to the Purchaser at such sale.

Each and every power and remedy hereby specifically given to the Vendor shall be in addition to every other power and remedy hereby specifically given or now or hereafter existing at law or in equity, and each and every power and remedy may be exercised from time to time and simultaneously and as often and in such order as may be deemed expedient by the Vendor. All such powers and remedies shall be cumulative, and the exercise of one shall not be deemed a waiver of the right to exercise any other or others. No delay or omission of the Vendor in the exercise of any such power or

remedy and no renewal or extension of any payments due hereunder shall impair any such power or remedy or shall be contrued to be a waiver of any default or an acquiescence therein. Any extension of time for payment hereunder or other indulgence duly granted to the Railroad shall not otherwise alter or affect the Vendor's rights or the Railroad's obligations hereunder. The Vendor's acceptance of any payment after it shall have become due hereunder shall not be deemed to alter or affect the Railroad's obligations or the Vendor's rights hereunder with respect to any subsequent payments or default therein.

If, after applying all sums of money realized by the Vendor under the remedies herein provided, there shall remain any amount due to it under the provisions of this Agreement, the Railroad shall pay the amount of such deficiency to the Vendor upon demand, together with interest from the date of such demand to the date of payment by the Railroad at the rate per annum set forth in Article 4 hereof applicable to amounts remaining unpaid after becoming due and payable. If the Railroad shall fail to pay such deficiency, the Vendor may bring suit therefor and shall be entitled to recover a judgment therefor against the Railroad. If, after applying as aforesaid all sums realized by the Vendor, there shall remain a surplus in the possession of the Vendor, such surplus shall be paid to the Railroad.

The Railroad will pay all reasonable expenses, including attorneys' fees, incurred by the Vendor in enforcing its remedies under the terms of this Agreement. In the event that the Vendor shall bring any suit to enforce any of its rights hereunder and shall be entitled to judgment, then in such suit the Vendor may recover reasonable expenses, including attorneys' fees, and the amount thereof shall be included in such judgment.

The foregoing provisions of this Article 17 are subject in all respects to all mandatory legal requirements at the time in force and applicable thereto.

Article 18. Applicable State Laws. Any provision of this Agreement prohibited by any applicable law of any jurisdiction (which is not overridden by applicable federal law) shall as to such jurisdiction be ineffective, without modifying the remaining provisions of this Agreement. Where, however, the conflicting provisions of any such applicable

law may be waived, they are hereby waived by the Railroad to the full extent permitted by law, it being the intention of the parties hereto that this Agreement shall be deemed to be a conditional sale and enforced as such.

Except as otherwise provided in this Agreement, the Railroad, to the full extent permitted by law, hereby waives all statutory or other legal requirements for any notice of any kind, notice of intention to take possession of or to sell or lease the Equipment, or any unit thereof, and any other requirements as to the time, place and terms of the sale or lease thereof, any other requirements with respect to the enforcement of the Vendor's rights under this Agreement and any and all rights of redemption.

ARTICLE 19. Recording. The Railroad will cause this Agreement, any assignments hereof and any amendments or supplements hereto or thereto to be filed and recorded with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act; and the Railroad will from time to time do and perform any other act and will execute, acknowledge, deliver, file, register, deposit and record any and all further instruments required by law or reasonably requested by the Vendor for the purpose of proper protection, to the satisfaction of counsel for the Vendor, of its title to the Equipment and its rights under this Agreement or for the purpose of carrying out the intention of this Agreement; and the Railroad will promptly furnish to the Vendor certificates or other evidence of such filing, registering, depositing and recording satisfactory to the Vendor.

ARTICLE 20. Payment of Expenses. The Railroad will pay all reasonable costs and expenses (other than the fees and expenses of counsel for any Builder) incident to this Agreement and the first assignment of this Agreement, and any instrument supplemental or related hereto or thereto, including all fees and expenses of counsel for the first assignee of this Agreement, and all reasonable costs and expenses in connection with the transfer by any party of interests acquired in such first assignment. If the first assignee is not an agent, such assignee may appoint a bank or trust company located in either the Borough of Manhattan, City and State of New York, or Chicago, Illinois, having capital and surplus aggregating at least $40,000,000 to act as agent on its behalf to hold all the right, title and interests of the Builders under this Agreement assigned

to it, all upon and subject to the terms and conditions provided for in a written agreement to be entered into by the first assignee and such agent in form and substance satisfactory to the first assignee and such agent; and the Railroad hereby agrees to pay all reasonable costs and expenses of such Agent. Prior to appointing such an agent, the assignee shall consult with the Railroad and shall give reasonable consideration to the recommendations of the Railroad as to the bank or trust company to be appointed.

ARTICLE 21. Notice. Any notice hereunder to any of the parties designated below shall be deemed to be properly served if delivered or mailed to it at its chief place of business at the following specified addresses:

(a) to the Railroad, at 80 East Jackson Street, Chicago, Illinois 60604, attention of R. W. Harper, Vice President-Finance.

(b) to a Builder, at its address specified in Item 1 of Schedule A hereto, and

(c) to any assignee of the Vendor or of the Railroad, at such address as may have been furnished in writing to each of the other parties hereto by such assignee,

or at such other address as may have been furnished in writing by such party to the other parties to this Agreement.

ARTICLE 22. Article Heading; Effect and Modification of Agreement. All article headings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

This Agreement, including the Schedules hereto, exclusively states the rights of the Vendor and the Railroad with respect to the Equipment and supersedes all other agreements, oral or written, with respect to the Equipment. No variation or modification of this Agreement and no waiver of any of its provisions or conditions shall be valid unless in writing and signed by duly authorized officers of the Vendor and the Railroad.

ARTICLE 23. Law Governing. The Railroad warrants that its chief place of business and its chief executive offices are located in the State of Illinois. The terms

of this Agreement and all rights and obligations hereunder shall be governed by the laws of the State of Illinois; provided, however, that the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act and such additional rights arising out of the filing, recording or deposit hereof, if any, and of any assignment hereof as shall be conferred by the laws of the several jurisdictions in which this Agreement or any assignment hereof shall be filed, recorded or deposited.

ARTICLE 24. Execution. This Agreement may be executed in any number of counterparts, and such counterparts together shall constitute but one and the same contract. It shall not be necessary that any counterpart be signed by all the parties so long as any counterpart be signed by the Railroad and one or more Builders. If this Agreement is assigned by any Builder, the original counterpart of this Agreement shall be deemed to be the counterpart executed by such Builder and delivered to such assignee. Each Builder shall be bound hereunder, notwithstanding the failure of any other Builder to execute and deliver this Agreement, or perform its obligations hereunder. Although this Agreement is dated, for convenience, as of the date first set forth above, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

IN WITNESS WHEREOF, the parties hereto, each pursuant to due corporate authority, have caused this instrument to be executed in their respective corporate names by their officers, thereunto duly authorized, and their respective corporate seals to be hereunto affixed, duly attested, all as of the date first above written.

GENERAL MOTORS CORPORATION
(Electro-Motive Division),

by

_____
Vice President

[Corporate Seal]

Attest:

_____
Assistant Secretary

FMC CORPORATION,

by

_____
Vice President

[Corporate Seal]

Attest:

_____
Assistant Secretary

PULLMAN INCORPORATED
(Pullman-Standard division),

by

_____
Vice President

[Corporate Seal]

Attest:

_____
Assistant Secretary

GENERAL ELECTRIC COMPANY,

by

_____
Manager-Marketing,
Locomotive Products Department

[Corporate Seal]

Attest:

_____
Attesting Secretary

PACCAR INC,

by

_____
Vice President

[Corporate Seal]

Attest:

_____
Assistant Secretary

ACF INDUSTRIES, INCORPORATED,

by

[Corporate Seal]

Vice President

Attest:

Assistant Secretary

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY,

by

[Corporate Seal]

Vice President-Finance

Attest:

Assistant Secretary

STATE OF ILLINOIS,)
) ss.:
COUNTY OF COOK,)

On this day of 1975, before me personally appeared , to me personally known, who, being by me duly sworn, says that he is a Vice President of GENERAL MOTORS CORPORATION (Electro-Motive Division), that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

_____
Notary Public

[Notarial Seal]

My Commission Expires

STATE OF ILLINOIS,)
) ss.:
COUNTY OF COOK,)

On this day of 1975, before me personally appeared , to me personally known, who, being by me duly sworn, says that he is a Vice President of FMC CORPORATION, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

_____
Notary Public

[Notarial Seal]

My Commission Expires

STATE OF ILLINOIS,)
) ss.:
COUNTY OF COOK,)

On this day of 1975, before me personally appeared , to me personally known, who, being by me duly sworn, says that he is a Vice President of PULLMAN INCORPORATED (Pullman-Standard division), that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Notary Public

[Notarial Seal]

My Commission Expires

COMMONWEALTH OF PENNSYLVANIA,)
) ss.:
COUNTY OF ERIE,)

On this 3rd day of February 1975, before me personally appeared C. S. Bressler, to me personally known, who, being by me duly sworn, says that he is Manager-Marketing, Locomotive Products Department, of GENERAL ELECTRIC COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Margaret M. Frew
Notary Public

MARGARET M. FREW, Notary Public
Erie, Erie Co., Pa.
My Commission Expires June 7, 1976

[Notarial Seal]

My Commission Expires

STATE OF WASHINGTON,)
) ss.:
COUNTY OF KING,)

On this day of 1975, before me personally appeared , to me personally known, who, being by me duly sworn, says that he is a Vice President of PACCAR INC, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

_____
Notary Public

[Notarial Seal]

My Commission Expires

STATE OF NEW YORK,)
) ss.:
COUNTY OF NEW YORK,)

On this day of 1975, before me personally appeared , to me personally known, who, being by me duly sworn, says that he is a Vice President of ACF INDUSTRIES, INCORPORATED, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

_____
Notary Public

[Notarial Seal]

My Commission Expires

STATE OF ILLINOIS,)
) ss.:
COUNTY OF COOK,)

On this 31st day of January 1975, before me personally appeared R. W. HARPER, to me personally known, who, being by me duly sworn, says that he is a Vice President of THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

E. R. Arquin
Notary Public

[Notarial Seal]

My Commission Expires
FEBRUARY 1, 1977

SCHEDULE A

Item 1: (a) General Motors Corporation (Electro-Motive Division), a Delaware corporation, La Grange, Illinois 60525.

(b) FMC Corporation, a Delaware corporation, 4700 Northwest Front Avenue, Portland, Oregon 97210.

(c) Pullman Incorporated (Pullman Standard division), a Delaware corporation, 200 South Michigan Avenue, Chicago, Illinois 60604.

(d) General Electric Company, a New York corporation, 2901 East Lake Road, Erie, Pennsylvania 16501.

(e) PACCAR Inc, a Delaware corporation, 1400 North 4th Street, Renton, Washington 98055.

(f) ACF Industries, Incorporated, a New Jersey corporation, 750 Third Avenue, New York, New York 10017.

Item 2: (a) (General Motors Corporation (Electro-Motive Division)): The Builder warrants that the Equipment will be built in accordance with the Specifications and the standards and requirements set forth in Article 2 of the Conditional Sale Agreement to which this Schedule is attached (hereinafter called the Agreement) and warrants that the Equipment will be free from defects in material (except as to specialties incorporated therein which were specified by the Railroad and not manufactured by the Builder) and workmanship under normal use and service; the Builder's obligations under this paragraph being limited to making good at its plant any part or parts of any unit of the Equipment which, within two years after the delivery of such unit to the Railroad or before such unit has been in scheduled service 250,000 miles (whichever event shall first occur), shall be returned to the Builder with transportation charges

prepaid and which the Builder's examination shall disclose to its satisfaction to have been thus defective.

This warranty of the Builder shall not apply (i) to any locomotive components which shall have been repaired or altered unless repaired or altered by the Builder or its authorized service representatives, if, in its judgment, such repairs or alterations affect the stability of a unit of the Equipment or (ii) to any unit of the Equipment which has been subject to misuse, negligence or accident.

This warranty is expressly in lieu of all other warranties expressed or implied, including any implied warranty of merchantability or fitness for a particular purpose, and of all other obligations or liabilities on the part of the Builder, except for its obligations under Articles 2, 3, 4 and 14 of the Agreement. The Builder neither assumes nor authorizes any person to assume for it any other liability in connection with the construction and delivery of the Equipment, except as aforesaid.

The Builder further agrees with the Railroad that neither the inspection as provided in Article 3 of the Agreement, nor any examination, nor the acceptance of any units of the Equipment as provided in Article 3 of the Agreement shall be deemed a waiver or a modification by the Railroad of any of its rights hereunder.

The Builder further agrees to hold harmless the Railroad from claims, costs and liability to the Builder's employees arising out of and in the course of their employment and while on the Railroad's premises or equipment except when traveling as revenue passengers on the Railroad's trains, and except that the Builder shall not be liable for the Railroad's sole negligence.

The Builder reserves the right to make change

in the design of, or add any improvements to, units of the Equipment at any time without incurring any obligation to make similar changes or additions in respect of units of Equipment previously delivered to the Railroad.

(b) (FMC Corporation): The Builder warrants that the Equipment will be built in accordance with the Specifications and the standards and conditions set forth in Article 2 of the Conditional Sale Agreement to which this Schedule is attached (hereinafter called the Agreement), and, except in cases of articles and materials specified by the Railroad and not manufactured by the Builder, warrants the Equipment to be free from defects in material and workmanship under normal use and service, the liability of the Builder under this warranty being limited, as the Railroad may elect: (i) to repair of the defect at the Builder's plant at Portland, Oregon; or (ii) to replacement of the defective part; or (iii) to the cost of repair or replacement according to the AAR Code of Rules Governing Condition of and Repairs to Freight and Passenger Cars with Interchange of Traffic.

The foregoing warranty of the Builder shall begin at the time of delivery of a unit of Equipment to the Railroad and terminate one year after such delivery. This warranty is expressly in lieu of all other warranties expressed or implied on the part of the Builder, except for the patent indemnification included in Article 14 of of the Agreement and except as hereinafter provided in this Schedule A, and the Builder neither assumes nor authorizes any person to assume for it any other warranty liability in connection with the construction and delivery of the Equipment.

The Builder further agrees that the Railroad shall have the right to repair the Equipment furnished by the Builder of its manufacture and that repair parts for such equipment may be made by, or for, the Railroad or purchased

in the open market, as the Railroad may determine; and it is agreed the Equipment may be repaired by other railroads no matter where the repair parts are obtained. This agreement includes the right on the part of the Railroad to purchase repair parts for such Equipment in anticipation of breakage, instead of waiting until the breakage actually occurs before ordering the repair parts.

The Builder's patent indemnification set forth in Article 14 of the Agreement does not apply to designs, systems, processes and formulae utilized by the Builder in or about the construction of the Equipment, or any unit thereof, as the result of specification by the Railroad, other than for patents or other rights controlled by the Builder; and the Railroad shall indemnify and save harmless the Builder and/or manufacturer and the Vendor for the use of any designs, systems, processes and formulae utilized by the Builder in or about the construction of the Equipment, or any unit thereof, as the result of specification by the Railroad, as against any patent infringement claims or damages as specified in said Article 14, other than for patents or other rights controlled by the Builder.

The Builder will hold harmless the Railroad from claims, costs and liability to Builder's employees arising out of and in the course of their employment and while on the Railroad's premises or equipment except when traveling as revenue passengers on the Railroad's trains.

(c) (Pullman Incorporated (Pullman-Standard division)): The Builder warrants that the Equipment will be built in accordance with the Specifications and the standards and requirements set forth in Article 2 of the Conditional Sale Agreement to which this Schedule is attached (hereinafter called the Agreement) and warrants the Equipment will be free from defects in material (except as to specialties incorporated therein specified by the Railroad

and not manufactured by the Builder) and workmanship and design under normal use and service, the Builder's obligation under this Item 2 being limited to making good at its plant any part or parts of any unit of Equipment which shall, within one year after the delivery of such unit of Equipment to the Railroad, be returned to the Builder with transportation charges prepaid and which examination by the Builder shall disclose to its satisfaction to have been thus defective.

The foregoing warranty is expressly in lieu of all other warranties, expressed or implied, including any implied merchantability or fitness for a particular purpose, and of all other obligations or liabilities on the part of the Builder, except for its obligations under Articles 2, 3, 4 and 14 of the Agreement, and the Builder neither assumes nor authorizes any person to assume for it any other liability in connection with the construction of the Equipment and delivery of the Equipment, except as aforesaid. It is further understood and agreed that in no event shall the Builder be liable for indirect or consequential damages of any kind.

The Builder further agrees with the Railroad that neither the inspection provided in Article 3 of the Agreement, nor any examination, nor the acceptance of any units of the Equipment as provided in said Article 3 shall be deemed a waiver or a modification by the Railroad of any of its rights under this Item 2.

(d) (General Electric Company): The Builder warrants that the Equipment will be built in accordance with the Specifications and the standards and requirements referred to in Article 2 of the Conditional Sale Agreement to which this Schedule is attached (hereinafter called the Agreement) and warrants the equipment will be free from defects in material (except as to specialties incorporated therein that are not of the Builder's own specification or design) and workmanship under normal use

and service; the Builder's obligations under this paragraph being limited to making good at its plant any part or parts of any unit of the Equipment which, within one year after the delivery of such unit to the Railroad, shall be returned to the Builder with transportation charges prepaid and which the Builder's examination shall disclose to its satisfaction to have been thus defective.

This warranty of the Builder shall not apply (i) to any locomotive components which shall have been repaired or altered, unless repaired or altered by the Builder or its authorized service representatives, if, in its judgment, such repairs or alterations affect the stability of a unit of the Equipment or (ii) to any unit of the Equipment which has been subject to misuse, negligence or accident.

THIS WARRANTY IS EXPRESSLY IN LIEU OF ALL OTHER WARRANTIES EXPRESSED OR IMPLIED, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND OF ALL OTHER OBLIGATIONS OR LIABILITIES ON THE PART OF THE BUILDER, EXCEPT FOR ITS OBLIGATIONS UNDER THE AGREEMENT. THE BUILDER NEITHER ASSUMES NOR AUTHORIZES ANY PERSON TO ASSUME FOR IT ANY OTHER LIABILITY IN CONNECTION WITH THE CONSTRUCTION AND DELIVERY OF THE EQUIPMENT, EXCEPT AS AFORESAID.

In no event shall the Builder be liable for special or consequential damages. The Builder's liability on any claim of any kind including negligence, or for any loss or damage arising out of, connected with, or resulting from, the Agreement, or from the performance or breach thereof, or from the manufacture, sale, delivery, resale, repair or use of any unit of the Equipment covered by, or furnished under, the Agreement, shall in no case exceed the Purchase Price of such unit of the Equipment involved in the claim, and upon the expiration of the warranty period specified above all such liability shall terminate. The Builder shall have no liability

for any unit of the Equipment or part thereof which becomes defective by reason of improper storage or application, misuse, negligence, accident or improper operation, maintenance, repairs or alterations on the part of the Railroad or any third party other than the Builder. The foregoing warranty shall constitute the sole remedy of the Railroad and the sole liability of the Builder.

It is understood that the Builder has the right to make changes in the design of, or to add improvements to units of the Equipment at any time without incurring any obligations to install, at the Builder's expense, the same or other locomotives sold by Builder.

The Builder further agrees with the Railroad that neither the inspection as provided in the Agreement, nor any examination, nor the acceptance of any units of the Equipment as provided in the Agreement shall be deemed a waiver or a modification by the Railroad of any of its rights under this Item 2.

(e) (PACCAR Inc): The Builder warrants that the Equipment will be built in accordance with the requirements, specifications and standards set forth in Article 2 of the Conditional Sale Agreement to which this Schedule is attached (hereinafter called the Agreement) and, except in cases of articles and materials specified by the Railroad and not manufactured by the Builder, warrants the Equipment to be free from defects in material and workmanship under normal use and service, the liability of the Builder under this warranty being limited, as the Railroad may elect: (i) to repair of the defects at the Builder's plant; or (ii) to replacement of a defective part; or (iii) to the cost of repair or replacement according to the AAR Code of Rules Governinig Condition of and Repairs to Freight and Passenger Cars with Interchange of Traffic. The Builder shall be given reasonable opportunity to verify any claim of defects in workmanship or materials.

The foregoing warranty of the Builder shall begin at the time of delivery of a unit of the Equipment to the Railroad and terminate two years after such delivery. THE BUILDER MAKES NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. The Railroad's right under the foregoing warranty shall be its sole and exclusive remedy and the Builder will have no liability for lost profit or for indirect, incidental, consequential or commercial losses. This warranty is expressly in lieu of all other warranties express or implied on the part of the Builder, except for the patent indemnification included in Article 14 of this Agreement. The Builder neither assumes nor authorizes any person to assume for it any other warranty liability in connection with the construction and delivery of the Equipment.

The Builder further agrees with the Railroad that neither the inspection as provided in Article 3 of the Agreement nor any examination nor the acceptance of any units of the Equipment as provided in said Article 3 shall be deemed a waiver or a modification by the Railroad of any of its rights under this Item 2.

The Builder will hold harmless the Railroad from claims, costs and liability to the Builder's employees arising out of and in the course of their employment and while on the Railroad's premises or equipment except when traveling as revenue passengers on the Railroad's trains.

(f) (ACF Industries, Incorporated): The Builder warrants that the Equipment will be built in accordance with the requirements, specifications and standards set forth in Article 2 of the Conditional Sale Agreement to which this Schedule is attached (hereinafter called this Agreement) and warrants the Equipment will be free from defects in material (except as to specialties incorporated therein which were specified or supplied by the Railroad and not manufactured by the Builder) and

workmanship under normal use and service, the Builder's obligation under this Item 2 being limited to making good at its factory any part or parts of any unit of the Equipment which shall be returned to the Builder with transportation charges prepaid, within one year after the delivery of such unit to the Railroad, and which the Builder's examination shall disclose to its satisfaction to have been thus defective. The foregoing warranty of the Builder is expressly in lieu of all other warranties, express or implied, including any implied warranty of merchantability or fitness for a particular purpose, and of all other obligations or liabilities under Articles 2, 3, 4 and 14 of the Agreement, and the Builder neither assumes nor authorizes any person to assume for it any other liability in connection with the construction and delivery of the Equipment except as aforesaid.

The Builder further agrees that neither the inspection as provided in Article 3 of this Agreement nor any examination nor the acceptance of any units of the Equipment as provided in said Article 3 shall be deemed a waiver or a modification by the Owner-Trustee of any of its rights under this Item 2.

SCHEDULE B

Builder	Type	Quantity	Builder's Specifications	Builder's Plant	Railroad's Numbers (inclusive)	Unit Base Price	Total Base Price	Time and Place of Delivery
(a) General Motors Corporation (Electro-Motive Divison)	2300 h.p. GP-39-2 locomotive	29	8075	McCook, Illinois	3626-3654	$355,200	$10,300,800	Prior to April 30, 1975, at Builder's Plant
(b) FMC Corporation	60' 9" 100-ton box car with roller bearings AAR Mechanical Designation XM	400	Job 17620	Portland, Oregon	611000-611399	36,000	14,400,000	March-April, 1975, at Builder's Plant
(c) Pullman Incorporated (Pullman-Standard division)	60' 9" 100-ton box car with roller bearings; AAR Mechanical Designation XL	216	Lot Number 9783	Bessemer, Alabama	611400-611615	33,100	7,149,600	April-May, 1975, at Bessemer, Ala.

SCHEDULE B (Cont'd)

Builder	Type	Quantity	Builder's Specifications	Builder's Plant	Railroad's Numbers (inclusive)	Unit Base Price	Total Base Price	Time and Place of Delivery
(d) General Electric Company	U-36-C, 3600 h.p. locomotive; AAR Mechanical Designation C-C	6	3690E	Erie, Pennsylvania	8794-8799	$436,300	$ 2,617,800	Prior to March 1, 1975, at Erie, Pa.
(e) PACCAR Inc	52' 6", 70-ton insulated box car with roller bearing trucks, cushioned underframe, dual Air'Pak load dividers, 16' doors;	100	PC-339, as revised	Renton, Washington	522800-522899	37,100	3,710,000	Prior to March 1, 1975, at Builder's Plant
(f) ACF Industries, Incorporated	4600 cu. ft., 100-ton covered hopper car with roller bearing trucks and interior coating	400	11-01312, dated November 11, 1974	Huntington, West Virginia	314800-315199	30,000	12,000,000	February-March, 1975, at Russell, Ky.

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INTERSTATE COMMERCE COMMISSION

CONDITIONAL SALE AGREEMENT

Dated as of January 15, 1975

Among

GENERAL MOTORS CORPORATION
(Electro-Motive Division),
FMC CORPORATION,
PULLMAN INCORPORATED (Pullman Standard division)
GENERAL ELECTRIC COMPANY,
PACCAR INC,
ACF INDUSTRIES, INCORPORATED

and

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY

CONDITIONAL SALE AGREEMENT dated as of January 15, 1975, among each of the corporations named in Item 1 of Schedule A hereto and THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, a Delaware corporation (hereinafter called the Railroad).

WHEREAS each of the corporations named in Item 1 of Schedule A hereto severally have agreed to construct, sell and deliver to the Railroad, and the Railroad has agreed to purchase, the equipment described in Schedule B hereto (hereinafter called the Equipment);

NOW, THEREFORE, in consideration of the mutual promises, covenants and agreements hereinafter set forth, the parties hereto do hereby agree as follows:

ARTICLE 1. Certain Definitions; Obligations of Builders Several; Additional Agreements. The term "Vendor", whenever used in this Agreement, means, before any assignment of any of their rights hereunder, the respective corporations named in Item 1 of Schedule A hereto and any successor or successors for the time being to their respective manufacturing properties and businesses, and, after any such assignment, both any assignee or assignees for the time being of such particular assigned rights as regards such rights, and also any assignor as regards any rights hereunder that are retained or excluded from any assignment. Whenever the term "Vendor" refers to a corporation named in Item 1 of Schedule A hereto, such term shall mean any or all such corporations, as the context may require. The term "Builder", whenever used in this Agreement, means, both before and after any such assignment, each of the respective corporations (as to the units of Equipment to be constructed by such corporation and sold hereunder) named in Item 1 of Schedule A hereto and any successor or successors for the time being to their respective manufacturing properties and businesses.

The rights and obligations of the Builders under this Agreement are several in accordance with their interests and not joint. Accordingly, whenever this Agreement, by the use of such designation as "the Vendor", "such Builder" or other similar term, confers a right or imposes an obligation upon any corporation named in Item 1 of Schedule A hereto or its successor, such right or obligation shall be

construed to accrue to or to be enforceable against only the specific corporation furnishing the units of Equipment giving rise to such right or obligation and its successors as herein provided.

Additional Agreements, if any, set forth in Schedule A hereto shall be deemed to be a part of this Agreement as fully as though set forth in full in this instrument.

ARTICLE 2. Construction and Sale. Pursuant to this Agreement, each Builder shall construct the units of the Equipment to be constructed by it as described in Schedule B hereto (such Equipment with respect to each Builder being hereinafter sometimes called its Equipment) and will sell and deliver to the Railroad, and the Railroad will purchase from such Builder and accept delivery of and pay for (as hereinafter provided), such Equipment, each unit of which shall be constructed in accordance with the specifications set forth therefor in Schedule B hereto and in accordance with such modifications thereof as may be agreed upon in writing between such Builder and the Railroad (which specifications and modifications, if any, are hereinafter called the Specifications). The design, quality and component parts of each unit of the Equipment shall conform, on the date of completion of manufacture of each thereof, to all Department of Transportation and Interstate Commerce Commission requirements and specifications and to all standards recommended by the Association of American Railroads reasonably interpreted as being applicable to equipment of the character of such units of the Equipment and each unit of the Equipment (except to the extent, if any, referred to in Schedule A hereto and/or in Article 8 hereof) will be new railroad equipment.

ARTICLE 3. Inspection and Delivery. Each Builder will deliver the units of its Equipment to the Railroad at the place or places specified in Schedule B hereto (or if Schedule B does not specify a place or places, at the place or places designated from time to time by the Railroad), freight charges, if any, prepaid, in accordance with the delivery schedule set forth in Schedule B hereto; provided, however, that no Builder shall have any obligation to deliver any unit of its Equipment hereunder at any time after the commencement of any proceedings specified in clause (c) or (d) of Article 16 hereof or if any event of default (as described in Article 16 hereof), or event which with lapse of time and/or demand would constitute such an event of default, shall have occurred.

Each Builder's obligation as to time of delivery is subject, however, to delays resulting from causes beyond the Builder's reasonable control, including but not limited to acts of God, acts of government such as embargoes, priorities and allocations, war or war conditions, riot or civil commotion, sabotage, strikes, differences with workmen, accidents, fire, flood, explosion, damage to plant, equipment or facilities, delays in receiving necessary materials or delays of carriers or subcontractors.

Notwithstanding the preceding provisions of this Article 3, any Equipment not delivered, accepted and settled for pursuant to Article 4 hereof on or before August 31, 1975, shall be excluded herefrom. If any unit or units of Equipment shall be excluded from this Agreement pursuant to the immediately preceding sentence, the Builder or Builders of such unit or units and the Railroad shall execute an agreement supplemental hereto limiting this Agreement to the units of Equipment not so excluded herefrom. If a Builder's failure to deliver Equipment so excluded from this Agreement resulted from one or more of the causes set forth in the immediately preceding paragraph, the Railroad shall nevertheless be obligated to accept such Equipment and pay the full purchase price therefor, determined as provided in this Agreement, if and when such Equipment shall be completed and delivered by such Builder, such payment to be in cash on the delivery of such Equipment, either directly or, in case the Railroad shall arrange therefor, by means of a conditional sale agreement, equipment trust or such other appropriate method of financing as the Railroad shall determine and as shall be reasonably acceptable to such Builder.

During construction, the Equipment shall be subject to inspection and approval by the authorized inspectors of the Railroad and each Builder shall grant to such authorized inspectors reasonable access to its plant. Each Builder agrees to inspect all materials used in the construction of the Equipment in accordance with the standard quality control practices of such Builder. Upon completion of each unit or of a number of units of the Equipment, such unit or units shall be presented to an inspector of the Railroad for inspection at the place specified for delivery of such unit or units, and if each such unit conforms to the Specifications, requirements and standards applicable thereto, such inspector or an authorized representative of the Railroad shall execute and deliver to such Builder a certificate of acceptance (hereinafter called the Certificate of Accep-

tance) stating that such unit or units have been inspected and accepted on behalf of the Railroad and are marked in accordance with Article 7 hereof; provided, however, that such Builder shall not thereby be relieved of its warranty referred to in Article 14 hereof.

On delivery of each such unit hereunder at the place specified for delivery, the Railroad will assume the responsibility and risk of, and shall not be released from its obligations hereunder in the event of, any damage to or the destruction or loss of such unit; provided, however, that such delivery shall not thereby relieve a Builder of its warranty referred to in Article 14 hereof.

ARTICLE 4. Purchase Price and Payment. The base price or prices per unit of the Equipment are set forth in Schedule B hereto. Such base price or prices are subject to such increase or decrease as may be agreed to by the Builder thereof and the Railroad. The term "Purchase Price" as used herein shall mean the base price or prices as so increased or decreased. If the aggregate Purchase Price of Equipment for which settlement has been made under this Agreement is in an amount not less than $50,250,000, the Railroad may, at its option, exclude from this Agreement any unit or units of Equipment for which settlement has not been made and the appropriate Builder or Builders of such unit or units (and any assignee of such Builder or Builders) shall, upon request of the Railroad enter into an agreement supplemental hereto evidencing such exclusion. The Railroad agrees to purchase any such unit or units so excluded from this Agreement and to pay the Builder in cash on the date such unit or units would otherwise have been settled for under this Agreement either directly, or, if the Builder and the Railroad shall mutually agree, by means of a conditional sale, equipment trust or other appropriate method of financing.

For the purpose of making settlement, the Equipment shall be divided into such number of groups (not more than three) of units of the Equipment, delivered to and accepted by the Railroad (each such group being hereinafter called a Group), as the respective Builder, the Railroad and the Vendor may agree to.

The Railroad hereby acknowledges itself to be indebted to the Vendor in the amount of, and hereby promises to pay in cash to the Vendor at such place as the Vendor

may designate, the Purchase Price of the Equipment, as follows:

(a) on each Closing Date (as hereinafter defined) the amount, if any, by which (x) the aggregate Purchase Price of all units of the Equipment for which settlement has theretofore and is then being made, as stated in the invoice or invoices presented in respect of such Closing Date (said invoiced prices being hereinafter called the Invoiced Purchase Prices), exceeds (y) the sum of $50,000,000 and any amount or amounts previously paid or payable with respect to the Invoiced Purchase Prices pursuant to this subparagraph (a); and

(b) in 15 consecutive equal (to the nearest multiple of $1,000, except for appropriate adjustment of the final instalment in case the amount payable pursuant to this subparagraph (b) shall not, when divided by 15, result in an amount ending in a multiple of $1,000) annual instalments, as hereinafter provided, an amount equal to the aggregate of the Invoiced Purchase Prices for all the Equipment less the amount paid or payable with respect thereto pursuant to subparagraph (a) of this paragraph (the aggregate of said instalments being hereinafter called the Conditional Sale Indebtedness).

In the event that on any Closing Date the final Purchase Price of any Group has not been finally determined, the invoice presented may be a preliminary invoice, subject to upward adjustment upon determination of the final Purchase Price, and a supplemental invoice may be presented by the Builder at least ten days prior to any subsequent Closing Date for settlement on such subsequent Closing Date for any increase in the Purchase Price; it being understood and agreed by the Builders that any preliminary invoice or invoices presented by the Builders in respect of any Group shall be in amount not in excess of the final Purchase Price of such Group.

The instalments of the Conditional Sale Indebtedness payable pursuant to subparagraph (b) of the third paragraph of this Article 4 shall be payable annually on May 15 in each year commencing on May 15, 1976, to and including May 15, 1990. The unpaid portion of the Conditional Sale Indebtedness shall bear interest from the respective Closing Dates on which such indebtedness was incurred at the rate of 9-3/4% per annum. Such interest shall be payable, to the extent accrued, on May 15 and November 15 in each year, commencing May 15, 1975.

The term "Closing Date" with respect to any Group of the Equipment shall mean March 3, 1975, and such other dates (after March 3, 1975, and prior to August 31, 1975,) not more than 10 business days following presentation by a Builder to the Railroad of the invoice and the Certificate or Certificates of Acceptance for such Group, as shall be fixed by the Railroad by written notice delivered to the Vendor at least six business days prior to the Closing Date designated therein; it being understood and agreed, however, that the aggregate Purchase Price of all Equipment settled for on Closing Dates prior to April 1, 1975, shall not exceed $26,000,000. The term "business days" as used herein means calendar days, excluding Saturdays, Sundays and any other day on which banking institutions in Chicago, Illinois, or New York, New York, are authorized to remain closed.

All interest under this Agreement shall be calculated on the basis of a 360-day year of twelve 30-day months.

The Railroad will pay, to the extent legally enforceable, interest at the rate of 10-3/4% per annum upon all amounts remaining unpaid after the same shall have become due and payable pursuant to the terms hereof, anything herein to the contrary notwithstanding.

All payments provided for in this Agreement shall be made in such coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts. Except as provided in Article 8 hereof, the Railroad shall not have the privilege of prepaying any instalment of its indebtedness hereunder prior to the date it becomes due.

In the event the Vendor, pursuant to Article 15 hereof, assigns the right to receive the payments herein provided to be made by the Railroad, the assignee thereof may request the Railroad to make and the Railroad shall make such payments to it at such address as shall be supplied to the Railroad by the assignee.

ARTICLE 5. Taxes. All payments to be made by the Railroad hereunder will be free of expense to the Vendor for collection or other charges and will be free of expense to the Vendor with respect to the amount of any local, state, federal or foreign taxes (other than net income, gross receipts [except gross receipts taxes in the nature of or in lieu of sales or use taxes], excess profits and similar taxes) or license fees, assessments, charges, fines or penal-

ties hereafter levied or imposed upon or in connection with or measured by, this Agreement or any sale, use, payment, shipment, delivery or transfer of title under the terms hereof (all such expenses, taxes, license fees, assessments, charges, fines and penalties being hereinafter called impositions), all of which impositions the Railroad assumes and agrees to pay on demand. The Railroad will also pay promptly all impositions which may be imposed upon the Equipment delivered to it or for the use or operation thereof or upon the earnings arising therefrom or upon the Vendor solely by reason of its ownership thereof and will keep at all times all and every part of the Equipment free and clear of all impositions which might in any way affect the title of the Vendor or result in a lien upon any part of the Equipment; provided, however, that the Railroad shall be under no obligation to pay any impositions of any kind so long as it is contesting in good faith and by appropriate legal proceedings such impositions and the nonpayment thereof does not, in the opinion of the Vendor, adversely affect the property or rights of the Vendor in or to the Equipment or otherwise under this Agreement. If any such impositions shall have been charged or levied against the Vendor directly and paid by the Vendor, the Railroad shall reimburse the Vendor upon presentation of an invoice therefor, and any amounts so paid by the Vendor shall be secured by and under this Agreement; provided, however, that the Railroad shall not be obligated to reimburse the Vendor for any impositions so paid unless the Vendor shall have been legally liable with respect thereto (as evidenced by an opinion of counsel for the Vendor) or unless the Railroad shall have approved the payment thereof.

ARTICLE 6. Title to the Equipment. The Vendor shall and hereby does retain the full legal title to and property in the Equipment until the Railroad shall have made all its payments under this Agreement and shall have kept and performed all its agreements herein contained, notwithstanding the delivery of the Equipment to and the possession and use thereof by the Railroad as provided in this Agreement. Any and all additions to the Equipment and any and all replacements of the Equipment and of parts thereof and additions thereto shall constitute accessions to the Equipment and shall be subject to all the terms and conditions of this Agreement and included in the term "Equipment" as used in this Agreement.

Except as otherwise specifically provided in Article 8 hereof, when and only when the full indebtedness in

respect of the Purchase Price of the Equipment, together with interest and all other payments as herein provided, shall have been paid, and all the Railroad's obligations herein contained shall have been performed by the Railroad, absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Railroad without further transfer or action on the part of the Vendor. However, the Vendor, if so requested by the Railroad at that time, will (a) execute a bill or bills of sale for the Equipment transferring its title thereto and property therein to the Railroad, or upon its order, free of all liens, security interests and other encumbrances created or retained hereby and deliver such bill or bills of sale to the Railroad at its address referred to in Article 21 hereof, (b) execute and deliver at the same place, for filing, recording or depositing in all necessary public offices, such instrument or instruments in writing as may be necessary or appropriate in order then to make clear upon the public records the title of the Railroad to the to the Equipment and (c) pay to the Railroad any money paid to the Vendor pursuant to Article 8 hereof and not theretofore applied as therein provided. The Railroad hereby waives and releases any and all rights, existing or that may be acquired, in or to the payment of any penalty, forfeit or damages for failure to execute and deliver such bill or bills of sale or instrument or instruments or to file any certificate of payment in compliance with any law or statute requiring the filing of the same, except for failure to execute and deliver such bill or bills of sale or instrument or instruments or to file such certificate within a reasonable time after written demand by the Railroad.

ARTICLE 7. Marking of the Equipment. The Railroad will cause each unit of the Equipment to be kept numbered with its identifying number as set forth in Schedule B hereto, or in the case of Equipment not there listed such identifying number as shall be set forth in any amendment or supplement hereto extending this Agreement to cover such Equipment, and will keep and maintain, plainly, distinctly, permanently and conspicuously marked on each side of each unit, in letters not less than one inch in height, the words "Ownership subject to a Security Interest Filed under the Interstate Commerce Act, Section 20c" or other appropriate markings approved by the Vendor, with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the Vendor's title to and property in the Equipment and its rights under this Agreement. The

Railroad will not place any such unit in operation or exercise any control or dominion over the same until such markings have been made thereon and will replace promptly any such markings which may be removed, defaced or destroyed. The Railroad will not change the number of any unit of the Equipment except in accordance with a statement of new number or numbers to be substituted therefor, which statement previously shall have been filed with the Vendor by the Railroad and filed, recorded and deposited by the Railroad in all public offices where this Agreement shall have been filed, recorded and deposited.

Except as provided in the immediately preceding paragraph, the Railroad will not allow the name of any person, association or corporation to be placed on any unit of the Equipment as a designation that might be interpreted as a claim of ownership; provided, however, that the Railroad may cause the Equipment to be lettered with the names or initials or other insignia of the Railroad or its affiliates.

ARTICLE 8. Casualty Occurrences. In the event that any unit of the Equipment shall be worn out, lost, stolen, destroyed, irreparably damaged or otherwise rendered permanently unfit for use from any cause whatsoever, or taken or requisitioned by condemnation or otherwise (such occurrences being hereinafter called Casualty Occurrences), the Railroad shall promptly (after it has knowledge of such Casualty Occurrence) and fully inform the Vendor in regard thereto. When the aggregate Casualty Value (as defined herein) of all units having suffered a Casualty Occurrence (exclusive of units having suffered a Casualty Occurrence with respect to which a payment shall have been made to the Vendor pursuant to this Article 8) hereunder shall exceed $250,000 (or such lesser amount as the Railroad may elect), the Railroad, within 90 days after the Railroad has knowledge of such event, shall file with the Vendor a certificate of an officer of the Railroad setting forth the Casualty Value of each unit of the Equipment having suffered a Casualty Occurrence and shall pay to the Vendor a sum equal to the aggregate Casualty Value as of the date of such payment of such unit or units of the Equipment having suffered a Casualty Occurrence, together with interest on such sum so being prepaid accrued to the date of such prepayment, but without premium, (the Railroad hereby agreeing to make such payment of accrued interest to the Vendor at the time it makes payment of such Casualty Value to the Vendor); provided, however, if and so long as no event of default

shall have occurred and be continuing hereunder, in lieu of making all or any portion of such payment to the Vendor, the Railroad may, on or before the expiration of such 90-day period, cause to be transferred to the Vendor a replacement unit or units of standard gauge railroad equipment (other than passenger or work equipment of types other than locomotives) and receive credit against the Casualty Value payment it would otherwise have been required to make in an amount equal to the value threof. The value of any unit or units of replacement equipment shall be equal to the cost thereof, if new, as specified in the invoice therefor delivered to the Vendor or, if not new, the lesser of (y) the fair market value thereof or (z) the original cost thereof less depreciation at a rate equal to 1/15th of such cost for each year in service, all as set forth in a certificate of an officer of the Railroad delivered to the Vendor at the time of such replacement. Any unit of replacement equipment shall have a remaining useful life (as evidenced by a certificate of an operating officer at the Railroad) at least as long as that which the Equipment being replaced would have had but for the Casualty Occurrence. In case any money is applied to prepay indebtedness, it shall be so applied, together with the interest due thereon, on the business day next following receipt by the Vendor of the appropriate payment, to reduce instalments of the aggregate Conditional Sale Indebtedness thereafter falling due in the inverse order of maturity thereof without premium.

The Casualty Value of each unit of the Equipment (other than a replacement unit) shall be deemed to be that amount which bears the same ratio to the original Purchase Price thereof (less, in the event that the Railroad shall have made any payment or payments under the provisions of subparagraph (a) of the third paragraph of Article 4 hereof, an amount which bears the same ratio to the aggregate of all such payments as the original Purchase Price of such unit bears to the original aggregate Purchase Price of all the Equipment) as the unpaid Conditional Sale Indebtedness (without giving effect to any prepayments then or theretofore made pursuant to this Article 8) as of the date payment is made with respect to such Casualty Occurrence bears to the original Conditional Sale Indebtedness. The Casualty Value of each replacement unit shall be deemed to be that amount which bears the same ratio to the portion of the cost thereof paid by the Vendor as the unpaid Conditional Sale Indebtedness ness (without giving effect to any prepayments then or theretofore made pursuant to this Article 8) as of the date payment

is made with respect to such Casualty Occurrence bears to the unpaid Conditional Sale Indebtedness (without giving effect to any such prepayments) as of the date of acquisition by the Vendor of such replacement unit.

The Railroad will cause any replacement unit or units to be marked as provided in Article 7 hereof. Any and all such replacements of Equipment shall constitute accessions to the Equipment and shall be subject to all appropriate terms and conditions of this Agreement as though part of the original Equipment delivered hereunder and shall be included in the term "Equipment" as used in this Agreement. Title to all such replacement units shall be free and clear of all liens and encumbrances except the liens permitted by the second paragraph of Article 12 hereof and shall be taken initially and shall remain in the name of the Vendor subject to the provisions hereof, and the Railroad shall execute, acknowledge, deliver, file, record or deposit all such documents and do any and all such acts as may be necessary to cause such replacement units to come under and be subject to this Agreement. All such replacement units shall be guaranteed and warranted in like manner as is customary at the time for similar equipment. Whenever the Railroad shall cause to be transferred to the Vendor a unit or units of replacement Equipment, the Railroad shall deliver to the Vendor an executed counterpart of an opinion of counsel covering the matters set forth in this paragraph.

In order to facilitate the sale or other disposition of any Equipment suffering a Casualty Occurrence, in respect of which the Railroad shall have paid to the Vendor the Casualty Value and/or shall have caused to be transferred to the Vendor a unit or units of replacement Equipment, the Vendor shall, upon request of the Railroad, execute and deliver to the Railroad or the Railroad's vendee, assignee or nominee, a bill of sale (without warranties) for such Equipment, and such other documents as may be required to release such Equipment from the terms and scope of this Agreement, in such form as may be reasonably requested by the Railroad.

The Railroad will at all times prior to the payment in full of the Conditional Sale Indebtedness together with interest thereon and all other payments required hereby, at its own expense, cause to be carried and maintained insurance in respect of the Equipment consisting of locomotives at the time subject hereto, and public liability insurance,

in amounts and against risks customarily insured against by railroad companies on similar equipment, and in any event in amounts and against risks comparable to those insured against by the Railroad on equipment owned by it; provided, however, that the Railroad may act as self-insurer in respect of losses and damage not exceeding $3,000,000 in respect of any single occurrence.

ARTICLE 9. Maintenance; Compliance with Laws and Rules. The Railroad will at all times maintain the Equipment or cause the Equipment to be maintained in good order and repair at its own expense.

During the term of this Agreement, the Railroad will at all times comply in all respects with all laws of the jurisdictions in which its operations involving the Equipment may extend, with the interchange rules of the Asociation of American Railroads and with all lawful rules of the Department of Transportation, Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Equipment, to the extent that such laws and rules affect the title, operation or use of the Equipment, and in the event that such laws or rules require any alteration, replacement or addition of any part on any unit of the Equipment, the Railroad will conform therewith, at its own expense; provided, however, that the Railroad may, in good faith, contest the validity or application of any such law or rule in any reasonable manner which does not, in the opinion of the Vendor, adversely affect the property or rights of the Vendor under this Agreement.

ARTICLE 10. Reports and Inspections. On or before March 31 in each year, commencing with the calendar year 1976, the Railroad shall furnish to the Vendor an accurate statement signed by an officer of the Railroad (a) setting forth as at the preceding December 31 the amount, description and numbers of all units of the Equipment that have suffered a Casualty Occurrence during the preceding calendar year (or since the date of this Agreement in the case of the first such statement) or that have been withdrawn from use pending repairs (other than running repairs) and such other information regarding the condition and state of repair of the Equipment as the Vendor may reasonably request and (b) stating that, in the case of all Equipment repaired or repainted during the period covered by such statement, the numbers and markings required by Article 7 hereof have

been preserved or replaced. During the term of this Agreement, the Vendor shall have the right, by its agents, to inspect the Equipment and the Railroad's records with respect thereto at such times and locations as the Vendor may reasonably request.

The Railroad shall furnish (i) as soon as available and in any event within 60 days after the end of each quarterly period, except the last, of each fiscal year, a balance sheet of the Railroad (as filed with the Interstate Commerce Commission (hereinafter called the ICC)) as at the end of such period, and an income statement of the Railroad as filed with the ICC for the period beginning on the first day of such fiscal year and ending on the date of such balance sheet, setting forth comparative figures for the corresponding period of the preceding fiscal year, all in reasonable detail and certified by the principal accounting officer of the Railroad, and (ii) as soon as available and in any event within 120 days after the end of each fiscal year, a copy of the Railroad's annual report as filed with the ICC, which shall include the balance sheet, income statement and statement of retained income of the Railroad certified by the principal accounting officer of the Railroad and which shall be accompanied by a letter from the independent accountants for Santa Fe Industries, Inc., the parent of the Railroad, stating that such financial statements, restated to generally accepted accounting principles, were included in the certified consolidated financial statement of Santa Fe Industries, Inc., and that such certified financial statements are not qualified with respect to the Railroad and, in the event a restatement to generally accepted accounting principles is required, such letter shall be accompanied by a schedule which shall describe such restatement in reasonable detail.

ARTICLE 11. Possession and Use. The Railroad, so long as an event of default shall not have occurred under this Agreement and be continuing, shall be entitled to the possession of the Equipment and the use thereof upon the lines of railroad owned or operated by it either alone or jointly with others and whether under lease or otherwise, or upon the lines of railroad owned or operated by any railroad company controlled by, or under common control with, the Railroad, or over which it has trackage rights, or upon connecting and other carriers in the usual interchange of traffic, from and after delivery of the Equipment by the Builder to the Railroad, but only upon and subject to all the terms and conditions of this Agreement.

ARTICLE 12. Prohibition Against Liens. The Railroad will pay or discharge any and all sums claimed by any party from, through or under the Railroad or its successors or assigns which, if unpaid, might become a lien, charge or security interest on the Equipment, or any unit thereof, equal or superior to the Vendor's title thereto or property therein; provided, however, that the Railroad shall be under no obligation to pay or discharge any such claim so long as it is contesting in good faith and by appropriate legal proceedings such claim and the nonpayment thereof does not, in the opinion of the Vendor, adversely affect the property or rights of the Vendor in or to the Equipment or otherwise under this Agreement. Any amounts paid by the Vendor in discharge of liens, charges or security interests upon the Equipment shall be secured by and under this Agreement.

This covenant will not be deemed breached by reason of liens for taxes, assessments or governmental charges or levies, in each case not due and delinquent, or undetermined or inchoate materialmen's, mechanics', workmen's, repairmen's or other like liens arising in the ordinary course of business and, in each case, not delinquent.

ARTICLE 13. Railroad's Indemnities. The Railroad agrees to indemnify, protect and hold harmless the Vendor from and against all losses, damages, injuries, liabilities, claims and demands whatsoever, regardless of the cause thereof, and expenses in connection therewith, including counsel fees, arising out of retention by the Vendor of title to the Equipment, the use and operation thereof by the Railroad during the period when title thereto remains in the Vendor or the transfer of title to the Equipment by the Vendor pursuant to any of the provisions of this Agreement, except, however, any losses, damages, injuries, liabilities, claims and demands whatsoever arising out of any tort, breach of warranty or failure to perform any covenant hereunder by any Builder. This covenant of indemnity shall continue in full force and effect notwithstanding the full payment of all sums due under this Agreement, or the satisfaction, discharge or termination of this Agreement in any manner whatsoever.

ARTICLE 14. Patent Indemnities; Builder's Warranty of Material and Workmanship. Except in cases of articles or materials specified by the Railroad and not manufactured by a Builder and in cases of designs, systems, processes, formulae or combinations specified by the Railroad and not

developed or purported to be developed by any Builder, each Builder agrees to indemnify, protect and hold harmless the Railroad from and against any and all liability, claims, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Railroad, its assigns or the users of its respective Equipment because of the use in or about the construction or operation of any of the Equipment of any design, system, process, formula, combination, article or material which infringes or is claimed to infringe on any patent or other right. The Railroad likewise will indemnify, protect and hold harmless the Vendor from and against any and all liability, claims, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Vendor because of the use in or about the construction or operation of any of the Equipment of any article or material specified by the Railroad and not manufactured by a Builder or of any design, system, process, formula or combination specified by the Railroad and not developed or purported to be developed by a Builder which infringes or is claimed to infringe on any patent or other right. Each Builder agrees to and hereby does, to the extent legally possible without impairing any claim, right or cause of action hereinafter referred to, assign, set over and deliver to the Railroad every claim, right and cause of action which such Builder has or hereafter shall have against the seller or sellers of any designs, systems, processes, formulae, combinations, articles or materials specified by the Railroad and purchased or otherwise acquired by such Builder for use in or about the construction or operation of any of the Equipment on the ground that any such design, system, process, formula, combination, article or material or operation thereof infringes or is claimed to infringe on any patent or other right. Each Builder further agrees to execute and deliver to the Railroad or the users of the Equipment all and every such further assurance as may be reasonably requested by the Railroad more fully to effectuate the assignment and delivery of every such claim, right and cause of action. Each Builder will give notice to the Railroad of any claim known to such Builder from which liability may be charged against the Railroad hereunder and the Railroad will give notice to the appropriate Builder of any claim known to the Railroad from which liability may be charged against any Builder hereunder. Such covenants of indemnity shall continue in full force and effect notwithstanding the full payment of all sums due under this Agreement, or the satisfaction,

discharge or termination of this Agreement in any manner whatsoever.

Each Builder's warranty of material and workmanship is set forth in Schedule A hereto.

ARTICLE 15. Assignments. The Railroad will not sell, assign, transfer or otherwise dispose of its rights under this Agreement or, except as provided in Article 11 hereof, transfer the right to possession of any unit of the Equipment without first obtaining the written consent of the Vendor. A sale, assignment, transfer or disposition to a railroad company organized under the laws of the United States of America or any of the states thereof which shall acquire all or substantially all the lines of railroad of the Railroad, and which, by execution of an appropriate instrument satisfactory to the Vendor, shall assume and agree to perform each of, and all, the obligations and covenants of the Railroad under this Agreement, shall not be deemed a breach of this covenant.

All or any of the rights, benefits and advantages of the Vendor under this Agreement, including the right to receive the payments herein provided to be made by the Railroad, may be assigned by the Vendor and reassigned by any assignee at any time or from time to time. No such assignment shall subject any assignee to, or relieve any Builder from, any of the obligations of such Builder to construct and deliver the Equipment in accordance with this Agreement or to respond to its respective warranties and indemnities contained or referred to in Article 14 hereof, or relieve the Railroad of any of its obligations to such Builders under Articles 2, 3, 4, 5, 13 and 14 hereof, Schedule A hereto and this Article 15 or of any other obligation which, according to its terms or context, is intended to survive an assignment.

Upon any such assignment either the assignor or the assignee shall give written notice to the Railroad, together with a counterpart or copy of such assignment, stating the identity and post office address of the assignee, and such assignee shall by virtue of such assignment acquire all the assignor's right, title and interest in and to the Equipment and this Agreement, or in and to a portion thereof, as the case may be, subject only to such reservations as may be contained in such assignment. From and after the receipt by the Railroadd of the notification of any such

assignment, all payments thereafter to be made by the Railroad under this Agreement shall, to the extent so assigned, be made to the assignee in such manner as it may direct.

The Railroad recognizes that it is the custom of railroad equipment manufacturers to assign conditional sale agreements and understands that the assignment of this Agreement, or of some of or all the rights of the Vendor hereunder, is contemplated. The Railroad expressly represents, for the purpose of assurance to any person, firm or corporation considering the acquisition of this Agreement or of all or any of the rights of the Vendor hereunder and for the purposes of inducing such acquisition, that in the event of such assignment by the Vendor as hereinbefore provided, the rights of such assignee to the entire unpaid indebtedness in respect of the Purchase Price or such part thereof as may be assigned, together with interest thereon, as well as any other rights hereunder which may be so assigned, shall not be subject to any defense, setoff, counterclaim or recoupment whatsoever arising out of any breach of any obligation of a Builder with respect to the Equipment or the manufacture, construction, delivery or warranty thereof, or with respect to any indemnity herein contained, nor subject to any defense, setoff, counterclaim or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to the Railroad by a Builder. Any and all such obligations, howsoever arising, shall be and remain enforceable by the Railroad against and only against the respective Builders.

The Railroad will (a) in connection with each settlement for the Equipment subsequent to such assignment, deliver to the assignee, at least five business days prior to the Closing Date for the Group fixed in the notice by the Railroad, all documents required by the terms of such assignment to be delivered to such assignee in connection with such settlement, in such number of counterparts or copies as may reasonably be requested, except for any opinion of counsel for such assignee, and (b) furnish to such assignee such number of counterparts of any other certificate or paper required by the Vendor as may reasonably be requested.

If this Agreement shall have been assigned by the Builders and the assignee shall not make payment to a Builder with respect to units of its Equipment as provided in the instrument making such assignment, such Builder will promptly notify the Railroad of such event and, if such

amount shall not have been previously paid by such assignee, the Railroad will, not later than 90 days after the date such payment was due, pay or cause to be paid to such Builder the aggregate unpaid Purchase Price of such units of its Equipment, together with interest from the day such payment was due to the date of payment by the Railroad at the highest prime rate of interest charged by any of the four New York City banks having the largest total assets, in effect on the date such payment was due.

ARTICLE 16. Defaults. In the event that any one or more of the following events of default shall occur and be continuing, to wit:

(a) the Railroad shall fail to pay in full any indebtedness in respect of the Purchase Price of the Equipment or any other sum payable by the Railroad as provided in this Agreement within ten days after payment thereof shall be due hereunder; or

(b) the Railroad shall, for more than 30 days after the Vendor shall have demanded in writing performance thereof, fail or refuse to comply with any covenant, agreement, term or provision of this Agreement, or of any agreement entered into concurrently herewith relating to the financing of the Equipment on its part to be kept or performed or to make provision satisfactory to the Vendor for such compliance; or

(c) a petition for reorganization under Section 77 of the Bankruptcy Act, as now constituted or as said Section 77 may be hereafter amended, shall be filed by or against the Railroad and, unless such petition shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Railroad under this Agreement shall not have been (and shall not continue to have been) duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees appointed (whether or not subject to ratification) in such proceedings in such manner that such obligations shall have the same status as obligations incurred by such trustee or trustees, within 30 days after such appointment, if any, or 60 days after such petition shall have been filed, whichever shall be earlier; or

(d) any other proceedings shall be commenced by or against the Railroad for any relief under any bankruptcy or insolvency law, or law relating to the relief of debtors, readjustments of indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which does not permit any readjustment of the indebtedness payable hereunder), and, unless such proceedings shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Railroad under this Agreement shall not have been (and shall not continue to have been) duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed (whether or not subject to ratification) for the Railroad or for its property in connection with any such proceedings in such manner that such obligations shall have the same status as obligations incurred by such trustee or trustees or receiver or receivers, within 30 days after such appointment, if any, or 60 days after such proceedings shall have been commenced, whichever shall be earlier; or

(e) the Railroad shall make or suffer any unauthorized assignment or transfer of this Agreement or any interest herein or any unauthorized transfer of the right to possession of any unit of the Equipment;

then at any time after the occurrence of such an event of default the Vendor may, upon written notice to the Railroad and upon compliance with any mandatory legal requirements then in force and applicable to such action by the Vendor, declare (hereinafter called a Declaration of Default) the entire indebtedness in respect of the Purchase Price of the Equipment, together with the interest thereon then accrued and unpaid, immediately due and payable, without further demand, and thereafter the aggregate of the unpaid balance of such indebtedness and interest shall bear interest from the date of such Declaration of Default at the rate per annum specified in Article 4 hereof as being applicable to amounts remaining unpaid after becoming due and payable, to the extent legally enforceable. The Vendor shall thereupon be entitled to recover judgment for the entire unpaid balance of the indebtedness in respect of the Purchase Price of the Equipment so payable, with interest as aforesaid, and to collect such judgment out of any property of

the Railroad wherever situated. The Railroad shall promptly notify the Vendor of any event which has come to its attention which constitutes, or which with the giving of notice and/or lapse of time could constitute, an event of default under this Agreement.

The Vendor may at its election waive any such event of default and its consequences and rescind and annul any Declaration of Default by notice to the Railroad in writing to that effect, and thereupon the respective rights of the parties shall be as they would have been if no such event of default had occurred and no Declaration of Default had been made. Notwithstanding the provisions of this paragraph, it is expressly understood and agreed by the Railroad that time is of the essence of this Agreement and that no such waiver, rescission or annulment shall extend to or affect any other or subsequent default or impair any rights or remedies consequent thereon.

ARTICLE 17. Remedies. At any time during the continuance of a Declaration of Default, the Vendor may, subject to compliance with any mandatory legal requirements then in force and applicable to the action to be taken by the Vendor, take or cause to be taken by its agent or agents immediate possession of the Equipment, or one or more of the units thereof, without liability to return to the Railroad any sums theretofore paid and free from all claims whatsoever, except as hereinafter in this Article 17 expressly provided, and may remove the same from possession and use of the Railroad or any other person and for such purpose may enter upon the Railroad's premises or any other premises where the Equipment may be located and may use and employ in connection with such removal any supplies, services and aids and any available trackage and other facilities or means of the Railroad.

In case the Vendor shall demand possession of the Equipment pursuant to this Agreement and shall reasonably designate a point or points upon the premises of the Railroad for the delivery of the Equipment to the Vendor, the Railroad shall, at its own expense, forthwith and in the usual manner (including, but not by way of limitation, giving prompt telegraphic and written notice to the Association of American Railroads and all railroads to which any part of the Equipment has been interchanged to return the Equipment so interchanged), cause (a) the Equipment to be moved to such point or points on its lines as shall

be designated by the Vendor and shall there deliver the Equipment or cause it to be delivered to the Vendor and (b) the Equipment to be moved to such interchange point or points of the Railroad as shall be designated by the Vendor upon any sale, lease or other disposal of all or any part of the Equipment by the Vendor. At the option of the Vendor, the Vendor may keep the Equipment on any of the lines or premises of the Railroad until the Vendor shall have leased, sold or otherwise disposed of the same, and for such purpose the Railroad agrees to furnish, without charge for rent or storage, the necessary facilities at any point or points selected by the Vendor reasonably convenient to the Railroad and, at the Railroad's risk, to permit inspection of the Equipment by the Vendor, the Vendor's representatives and prospective purchasers and users. This agreement to deliver the Equipment and furnish facilities as hereinbefore provided is of the essence of the agreement between the parties, and, upon application to any court of equity having jurisdiction in the premises, the Vendor shall be entitled to a decree against the Railroad requiring specific performance hereof. The Railroad hereby expressly waives any and all claims against the Vendor and its agent or agents for damages of whatever nature in connection with any retaking of any unit of the Equipment in any reasonable manner.

At any time during the continuance of a Declaration of Default, the Vendor (after retaking possession of the Equipment as hereinbefore in this Article 17 provided) may at its election and upon such notice as is hereinafter set forth retain the Equipment in satisfaction of the entire indebtedness in respect of the Purchase Price of the Equipment and make such disposition thereof as the Vendor shall deem fit. Written notice of the Vendor's election to retain the Equipment shall be given to the Railroad by telegram or registered mail, addressed as provided in Article 21 hereof, and to any other persons to whom the law may require notice, within 30 days after such Declaration of Default. In the event that the Vendor should elect to retain the Equipment and no objection is made thereto within the 30-day period described in the second proviso below, all the Railroad's rights in the Equipment shall thereupon terminate and all payments made by the Railroad may be retained by the Vendor as compensation for the use of the Equipment by the Railroad; <u>provided, however</u>, that if the Railroad, before the expiration of the 30-day period described in the proviso below,

should pay or cause to be paid to the Vendor the total unpaid balance of the indebtedness in respect of the Purchase Price of the Equipment, together with interest thereon accrued and unpaid and all other payments due under this Agreement as well as expenses of the Vendor in retaking possession of, removing and storing the Equipment and the Vendor's reasonable attorneys' fees, then in such event absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Railroad; provided, further, that if the Railroad or any other persons notified under the terms of this paragraph object in writing to the Vendor within 30 days from the receipt of notice of the Vendor's election to retain the Equipment, then the Vendor may not so retain the Equipment, but shall sell, lease or otherwise dispose of it or continue to hold it pending sale, lease or other disposition as hereinafter provided or as may otherwise be permitted by law. If the Vendor shall have given no notice to retain as hereinabove provided or notice of intention to dispose of the Equipment in any other manner, it shall be deemed to have elected to sell the Equipment in accordance with the provisions of this Article 17.

At any time during the continuance of a Declaration of Default, the Vendor, with or without retaking possession thereof, at its election and upon reasonable notice to the Railroad and to any other persons to whom the law may require notice of the time and place, may sell the Equipment, or any unit thereof, free from any and all claims of the Railroad or any other party claiming from, through or under the Railroad, at law or in equity, at public or private sale and with or without advertisement as the Vendor may determine; provided, however, that if, prior to such sale and prior to the making of a contract for such sale, the Railroad should tender full payment of the total unpaid balance of the indebtedness in respect of the Purchase Price of the Equipment, together with interest thereon accrued and unpaid and all other payments due under this Agreement as well as expenses of the Vendor in retaking possession of, removing, storing, holding and preparing the Equipment for, and otherwise arranging for, the sale and the Vendor's reasonable attorneys' fees, then in such event absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Railroad. The proceeds of such sale, less the attorneys' fees and any other expenses incurred by the Vendor in retaking possession of, removing, storing,

holding, preparing for sale and selling the Equipment, shall be credited on the amount due to the Vendor under the provisions of this Agreement.

Any sale hereunder may be held or conducted at such place or places and at such time or times as the Vendor may specify, in one lot and as an entirety or in separate lots and without the necessity of gathering at the place of sale the property to be sold, and in general in such manner as the Vendor may determine. The Vendor or the Railroad may bid for and become the purchaser of the Equipment, or any unit thereof, so offered for sale. The Railroad shall be given written notice of such sale not less than ten days prior thereto, by telegram or registered mail addressed to the Railroad as provided in Article 21 hereof. If such sale shall be a private sale (which shall be deemed to mean only a sale where an advertisement for bids has not been published in a newspaper of general circulation or a sale where less than 40 railroads have been solicited in writing to submit bids), it shall be subject to the right of the Railroad to purchase or provide a purchaser, within ten days after notice of the proposed sale price, at the same price offered by the intending purchaser or a better price. In the event that the Vendor shall be the purchaser of the Equipment, it shall not be accountable to the Railroad (except to the extent of surplus money received as hereinafter provided in this Article 17), and in payment of the purchase price therefor the Vendor shall be entitled to have credited on account thereof all or any part of the sums due to the Vendor from the Railroad hereunder. From and after the date of any such sale, the Railroad shall pay to the Vendor the per diem interchange for each unit of Equipment which shall not have been assembled, as hereinabove provided, by the date of such sale for each day from the date of such sale to the date of delivery to the Purchaser at such sale.

Each and every power and remedy hereby specifically given to the Vendor shall be in addition to every other power and remedy hereby specifically given or now or hereafter existing at law or in equity, and each and every power and remedy may be exercised from time to time and simultaneously and as often and in such order as may be deemed expedient by the Vendor. All such powers and remedies shall be cumulative, and the exercise of one shall not be deemed a waiver of the right to exercise any other or others. No delay or omission of the Vendor in the exercise of any such power or

remedy and no renewal or extension of any payments due hereunder shall impair any such power or remedy or shall be contrued to be a waiver of any default or an acquiescence therein. Any extension of time for payment hereunder or other indulgence duly granted to the Railroad shall not otherwise alter or affect the Vendor's rights or the Railroad's obligations hereunder. The Vendor's acceptance of any payment after it shall have become due hereunder shall not be deemed to alter or affect the Railroad's obligations or the Vendor's rights hereunder with respect to any subsequent payments or default therein.

If, after applying all sums of money realized by the Vendor under the remedies herein provided, there shall remain any amount due to it under the provisions of this Agreement, the Railroad shall pay the amount of such deficiency to the Vendor upon demand, together with interest from the date of such demand to the date of payment by the Railroad at the rate per annum set forth in Article 4 hereof applicable to amounts remaining unpaid after becoming due and payable. If the Railroad shall fail to pay such deficiency, the Vendor may bring suit therefor and shall be entitled to recover a judgment therefor against the Railroad. If, after applying as aforesaid all sums realized by the Vendor, there shall remain a surplus in the possession of the Vendor, such surplus shall be paid to the Railroad.

The Railroad will pay all reasonable expenses, including attorneys' fees, incurred by the Vendor in enforcing its remedies under the terms of this Agreement. In the event that the Vendor shall bring any suit to enforce any of its rights hereunder and shall be entitled to judgment, then in such suit the Vendor may recover reasonable expenses, including attorneys' fees, and the amount thereof shall be included in such judgment.

The foregoing provisions of this Article 17 are subject in all respects to all mandatory legal requirements at the time in force and applicable thereto.

Article 18. Applicable State Laws. Any provision of this Agreement prohibited by any applicable law of any jurisdiction (which is not overridden by applicable federal law) shall as to such jurisdiction be ineffective, without modifying the remaining provisions of this Agreement. Where, however, the conflicting provisions of any such applicable

law may be waived, they are hereby waived by the Railroad to the full extent permitted by law, it being the intention of the parties hereto that this Agreement shall be deemed to be a conditional sale and enforced as such.

Except as otherwise provided in this Agreement, the Railroad, to the full extent permitted by law, hereby waives all statutory or other legal requirements for any notice of any kind, notice of intention to take possession of or to sell or lease the Equipment, or any unit thereof, and any other requirements as to the time, place and terms of the sale or lease thereof, any other requirements with respect to the enforcement of the Vendor's rights under this Agreement and any and all rights of redemption.

ARTICLE 19. Recording. The Railroad will cause this Agreement, any assignments hereof and any amendments or supplements hereto or thereto to be filed and recorded with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act; and the Railroad will from time to time do and perform any other act and will execute, acknowledge, deliver, file, register, deposit and record any and all further instruments required by law or reasonably requested by the Vendor for the purpose of proper protection, to the satisfaction of counsel for the Vendor, of its title to the Equipment and its rights under this Agreement or for the purpose of carrying out the intention of this Agreement; and the Railroad will promptly furnish to the Vendor certificates or other evidence of such filing, registering, depositing and recording satisfactory to the Vendor.

ARTICLE 20. Payment of Expenses. The Railroad will pay all reasonable costs and expenses (other than the fees and expenses of counsel for any Builder) incident to this Agreement and the first assignment of this Agreement, and any instrument supplemental or related hereto or thereto, including all fees and expenses of counsel for the first assignee of this Agreement, and all reasonable costs and expenses in connection with the transfer by any party of interests acquired in such first assignment. If the first assignee is not an agent, such assignee may appoint a bank or trust company located in either the Borough of Manhattan, City and State of New York, or Chicago, Illinois, having capital and surplus aggregating at least $40,000,000 to act as agent on its behalf to hold all the right, title and interests of the Builders under this Agreement assigned

to it, all upon and subject to the terms and conditions provided for in a written agreement to be entered into by the first assignee and such agent in form and substance satisfactory to the first assignee and such agent; and the Railroad hereby agrees to pay all reasonable costs and expenses of such Agent. Prior to appointing such an agent, the assignee shall consult with the Railroad and shall give reasonable consideration to the recommendations of the Railroad as to the bank or trust company to be appointed.

ARTICLE 21. Notice. Any notice hereunder to any of the parties designated below shall be deemed to be properly served if delivered or mailed to it at its chief place of business at the following specified addresses:

(a) to the Railroad, at 80 East Jackson Street, Chicago, Illinois 60604, attention of R. W. Harper, Vice President-Finance.

(b) to a Builder, at its address specified in Item 1 of Schedule A hereto, and

(c) to any assignee of the Vendor or of the Railroad, at such address as may have been furnished in writing to each of the other parties hereto by such assignee,

or at such other address as may have been furnished in writing by such party to the other parties to this Agreement.

ARTICLE 22. Article Heading; Effect and Modification of Agreement. All article headings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

This Agreement, including the Schedules hereto, exclusively states the rights of the Vendor and the Railroad with respect to the Equipment and supersedes all other agreements, oral or written, with respect to the Equipment. No variation or modification of this Agreement and no waiver of any of its provisions or conditions shall be valid unless in writing and signed by duly authorized officers of the Vendor and the Railroad.

ARTICLE 23. Law Governing. The Railroad warrants that its chief place of business and its chief executive offices are located in the State of Illinois. The terms

of this Agreement and all rights and obligations hereunder shall be governed by the laws of the State of Illinois; provided, however, that the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act and such additional rights arising out of the filing, recording or deposit hereof, if any, and of any assignment hereof as shall be conferred by the laws of the several jurisdictions in which this Agreement or any assignment hereof shall be filed, recorded or deposited.

ARTICLE 24. Execution. This Agreement may be executed in any number of counterparts, and such counterparts together shall constitute but one and the same contract. It shall not be necessary that any counterpart be signed by all the parties so long as any counterpart be signed by the Railroad and one or more Builders. If this Agreement is assigned by any Builder, the original counterpart of this Agreement shall be deemed to be the counterpart executed by such Builder and delivered to such assignee. Each Builder shall be bound hereunder, notwithstanding the failure of any other Builder to execute and deliver this Agreement, or perform its obligations hereunder. Although this Agreement is dated, for convenience, as of the date first set forth above, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

IN WITNESS WHEREOF, the parties hereto, each pursuant to due corporate authority, have caused this instrument to be executed in their respective corporate names by their officers, thereunto duly authorized, and their respective corporate seals to be hereunto affixed, duly attested, all as of the date first above written.

GENERAL MOTORS CORPORATION
(Electro-Motive Division),

by P.K. Hoglund
Vice President

[Corporate Seal]

Attest:
W.R. Thomas
Assistant Secretary

FMC CORPORATION,

by

_____
Vice President

[Corporate Seal]

Attest:

_____
Assistant Secretary

PULLMAN INCORPORATED
(Pullman-Standard division),

by

_____
Vice President

[Corporate Seal]

Attest:

_____
Assistant Secretary

GENERAL ELECTRIC COMPANY,

by

_____
Manager-Marketing,
Locomotive Products Department

[Corporate Seal]

Attest:

_____
Attesting Secretary

PACCAR INC,

by

_____
Vice President

[Corporate Seal]

Attest:

_____
Assistant Secretary

ACF INDUSTRIES, INCORPORATED,

by

[Corporate Seal] _____ Vice President

Attest:

_____ Assistant Secretary

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY,

by

[Corporate Seal] _____ Vice President-Finance

Attest:

_____ Assistant Secretary

STATE OF ILLINOIS,)
) ss.:
COUNTY OF COOK,)

On this 3RD day of FEBRUARY 1975, before me personally appeared P. K. HOGLUND, to me personally known, who, being by me duly sworn, says that he is a Vice President of GENERAL MOTORS CORPORATION (Electro-Motive Division), that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Zula C. Clair
Notary Public

[Notarial Seal]

My Commission Expires JULY 11, 1976

STATE OF ILLINOIS,)
) ss.:
COUNTY OF COOK,)

On this day of 1975, before me personally appeared , to me personally known, who, being by me duly sworn, says that he is a Vice President of FMC CORPORATION, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Notary Public

[Notarial Seal]

My Commission Expires

STATE OF ILLINOIS,)
) ss.:
COUNTY OF COOK,)

On this day of 1975, before me personally appeared , to me personally known, who, being by me duly sworn, says that he is a Vice President of PULLMAN INCORPORATED (Pullman-Standard division), that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

_____
Notary Public

[Notarial Seal]

My Commission Expires

COMMONWEALTH OF PENNSYLVANIA,)
) ss.:
COUNTY OF ERIE,)

On this day of 1975, before me personally appeared , to me personally known, who, being by me duly sworn, says that he is Manager-Marketing, Locomotive Products Department, of GENERAL ELECTRIC COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

_____
Notary Public

[Notarial Seal]

My Commission Expires

STATE OF WASHINGTON,)
) ss.:
COUNTY OF KING,)

On this day of 1975, before me personally appeared , to me personally known, who, being by me duly sworn, says that he is a Vice President of PACCAR INC, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

_____
Notary Public

[Notarial Seal]

My Commission Expires

STATE OF NEW YORK,)
) ss.:
COUNTY OF NEW YORK,)

On this day of 1975, before me personally appeared , to me personally known, who, being by me duly sworn, says that he is a Vice President of ACF INDUSTRIES, INCORPORATED, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

_____
Notary Public

[Notarial Seal]

My Commission Expires

STATE OF ILLINOIS,)
) ss.:
COUNTY OF COOK,)

On this 31st day of January 1975, before me personally appeared R. W. HARPER, to me personally known, who, being by me duly sworn, says that he is a Vice President of THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

E. H. Arreguin
Notary Public

[Notarial Seal]

My Commission Expires
FEBRUARY 1, 1977

SCHEDULE A

Item 1: (a) General Motors Corporation (Electro-Motive Division), a Delaware corporation, La Grange, Illinois 60525.

(b) FMC Corporation, a Delaware corporation, 4700 Northwest Front Avenue, Portland, Oregon 97210.

(c) Pullman Incorporated (Pullman Standard division), a Delaware corporation, 200 South Michigan Avenue, Chicago, Illinois 60604.

(d) General Electric Company, a New York corporation, 2901 East Lake Road, Erie, Pennsylvania 16501.

(e) PACCAR Inc, a Delaware corporation, 1400 North 4th Street, Renton, Washington 98055.

(f) ACF Industries, Incorporated, a New Jersey corporation, 750 Third Avenue, New York, New York 10017.

Item 2: (a) (General Motors Corporation (Electro-Motive Division)): The Builder warrants that the Equipment will be built in accordance with the Specifications and the standards and requirements set forth in Article 2 of the Conditional Sale Agreement to which this Schedule is attached (hereinafter called the Agreement) and warrants that the Equipment will be free from defects in material (except as to specialties incorporated therein which were specified by the Railroad and not manufactured by the Builder) and workmanship under normal use and service; the Builder's obligations under this paragraph being limited to making good at its plant any part or parts of any unit of the Equipment which, within two years after the delivery of such unit to the Railroad or before such unit has been in scheduled service 250,000 miles (whichever event shall first occur), shall be returned to the Builder with transportation charges

prepaid and which the Builder's examination shall disclose to its satisfaction to have been thus defective.

This warranty of the Builder shall not apply (i) to any locomotive components which shall have been repaired or altered unless repaired or altered by the Builder or its authorized service representatives, if, in its judgment, such repairs or alterations affect the stability of a unit of the Equipment or (ii) to any unit of the Equipment which has been subject to misuse, negligence or accident.

This warranty is expressly in lieu of all other warranties expressed or implied, including any implied warranty of merchantability or fitness for a particular purpose, and of all other obligations or liabilities on the part of the Builder, except for its obligations under Articles 2, 3, 4 and 14 of the Agreement. The Builder neither assumes nor authorizes any person to assume for it any other liability in connection with the construction and delivery of the Equipment, except as aforesaid.

The Builder further agrees with the Railroad that neither the inspection as provided in Article 3 of the Agreement, nor any examination, nor the acceptance of any units of the Equipment as provided in Article 3 of the Agreement shall be deemed a waiver or a modification by the Railroad of any of its rights hereunder.

The Builder further agrees to hold harmless the Railroad from claims, costs and liability to the Builder's employees arising out of and in the course of their employment and while on the Railroad's premises or equipment except when traveling as revenue passengers on the Railroad's trains, and except that the Builder shall not be liable for the Railroad's sole negligence.

The Builder reserves the right to make change

in the design of, or add any improvements to, units of the Equipment at any time without incurring any obligation to make similar changes or additions in respect of units of Equipment previously delivered to the Railroad.

(b) (FMC Corporation): The Builder warrants that the Equipment will be built in accordance with the Specifications and the standards and conditions set forth in Article 2 of the Conditional Sale Agreement to which this Schedule is attached (hereinafter called the Agreement), and, except in cases of articles and materials specified by the Railroad and not manufactured by the Builder, warrants the Equipment to be free from defects in material and workmanship under normal use and service, the liability of the Builder under this warranty being limited, as the Railroad may elect: (i) to repair of the defect at the Builder's plant at Portland, Oregon; or (ii) to replacement of the defective part; or (iii) to the cost of repair or replacement according to the AAR Code of Rules Governing Condition of and Repairs to Freight and Passenger Cars with Interchange of Traffic.

The foregoing warranty of the Builder shall begin at the time of delivery of a unit of Equipment to the Railroad and terminate one year after such delivery. This warranty is expressly in lieu of all other warranties expressed or implied on the part of the Builder, except for the patent indemnification included in Article 14 of of the Agreement and except as hereinafter provided in this Schedule A, and the Builder neither assumes nor authorizes any person to assume for it any other warranty liability in connection with the construction and delivery of the Equipment.

The Builder further agrees that the Railroad shall have the right to repair the Equipment furnished by the Builder of its manufacture and that repair parts for such equipment may be made by, or for, the Railroad or purchased

in the open market, as the Railroad may determine; and it is agreed the Equipment may be repaired by other railroads no matter where the repair parts are obtained. This agreement includes the right on the part of the Railroad to purchase repair parts for such Equipment in anticipation of breakage, instead of waiting until the breakage actually occurs before ordering the repair parts.

The Builder's patent indemnification set forth in Article 14 of the Agreement does not apply to designs, systems, processes and formulae utilized by the Builder in or about the construction of the Equipment, or any unit thereof, as the result of specification by the Railroad, other than for patents or other rights controlled by the Builder; and the Railroad shall indemnify and save harmless the Builder and/or manufacturer and the Vendor for the use of any designs, systems, processes and formulae utilized by the Builder in or about the construction of the Equipment, or any unit thereof, as the result of specification by the Railroad, as against any patent infringement claims or damages as specified in said Article 14, other than for patents or other rights controlled by the Builder.

The Builder will hold harmless the Railroad from claims, costs and liability to Builder's employees arising out of and in the course of their employment and while on the Railroad's premises or equipment except when traveling as revenue passengers on the Railroad's trains.

(c) (Pullman Incorporated (Pullman-Standard division)): The Builder warrants that the Equipment will be built in accordance with the Specifications and the standards and requirements set forth in Article 2 of the Conditional Sale Agreement to which this Schedule is attached (hereinafter called the Agreement) and warrants the Equipment will be free from defects in material (except as to specialties incorporated therein specified by the Railroad

and not manufactured by the Builder) and workmanship and design under normal use and service, the Builder's obligation under this Item 2 being limited to making good at its plant any part or parts of any unit of Equipment which shall, within one year after the delivery of such unit of Equipment to the Railroad, be returned to the Builder with transportation charges prepaid and which examination by the Builder shall disclose to its satisfaction to have been thus defective.

The foregoing warranty is expressly in lieu of all other warranties, expressed or implied, including any implied merchantability or fitness for a particular purpose, and of all other obligations or liabilities on the part of the Builder, except for its obligations under Articles 2, 3, 4 and 14 of the Agreement, and the Builder neither assumes nor authorizes any person to assume for it any other liability in connection with the construction of the Equipment and delivery of the Equipment, except as aforesaid. It is further understood and agreed that in no event shall the Builder be liable for indirect or consequential damages of any kind.

The Builder further agrees with the Railroad that neither the inspection provided in Article 3 of the Agreement, nor any examination, nor the acceptance of any units of the Equipment as provided in said Article 3 shall be deemed a waiver or a modification by the Railroad of any of its rights under this Item 2.

(d) (General Electric Company): The Builder warrants that the Equipment will be built in accordance with the Specifications and the standards and requirements referred to in Article 2 of the Conditional Sale Agreement to which this Schedule is attached (hereinafter called the Agreement) and warrants the equipment will be free from defects in material (except as to specialties incorporated therein that are not of the Builder's own specification or design) and workmanship under normal use

and service; the Builder's obligations under this paragraph being limited to making good at its plant any part or parts of any unit of the Equipment which, within one year after the delivery of such unit to the Railroad, shall be returned to the Builder with transportation charges prepaid and which the Builder's examination shall disclose to its satisfaction to have been thus defective.

This warranty of the Builder shall not apply (i) to any locomotive components which shall have been repaired or altered, unless repaired or altered by the Builder or its authorized service representatives, if, in its judgment, such repairs or alterations affect the stability of a unit of the Equipment or (ii) to any unit of the Equipment which has been subject to misuse, negligence or accident.

THIS WARRANTY IS EXPRESSLY IN LIEU OF ALL OTHER WARRANTIES EXPRESSED OR IMPLIED, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND OF ALL OTHER OBLIGATIONS OR LIABILITIES ON THE PART OF THE BUILDER, EXCEPT FOR ITS OBLIGATIONS UNDER THE AGREEMENT. THE BUILDER NEITHER ASSUMES NOR AUTHORIZES ANY PERSON TO ASSUME FOR IT ANY OTHER LIABILITY IN CONNECTION WITH THE CONSTRUCTION AND DELIVERY OF THE EQUIPMENT, EXCEPT AS AFORESAID.

In no event shall the Builder be liable for special or consequential damages. The Builder's liability on any claim of any kind including negligence, or for any loss or damage arising out of, connected with, or resulting from, the Agreement, or from the performance or breach thereof, or from the manufacture, sale, delivery, resale, repair or use of any unit of the Equipment covered by, or furnished under, the Agreement, shall in no case exceed the Purchase Price of such unit of the Equipment involved in the claim, and upon the expiration of the warranty period specified above all such liability shall terminate. The Builder shall have no liability

for any unit of the Equipment or part thereof which becomes defective by reason of improper storage or application, misuse, negligence, accident or improper operation, maintenance, repairs or alterations on the part of the Railroad or any third party other than the Builder. The foregoing warranty shall constitute the sole remedy of the Railroad and the sole liability of the Builder.

It is understood that the Builder has the right to make changes in the design of, or to add improvements to units of the Equipment at any time without incurring any obligations to install, at the Builder's expense, the same or other locomotives sold by Builder.

The Builder further agrees with the Railroad that neither the inspection as provided in the Agreement, nor any examination, nor the acceptance of any units of the Equipment as provided in the Agreement shall be deemed a waiver or a modification by the Railroad of any of its rights under this Item 2.

(e) (PACCAR Inc): The Builder warrants that the Equipment will be built in accordance with the requirements, specifications and standards set forth in Article 2 of the Conditional Sale Agreement to which this Schedule is attached (hereinafter called the Agreement) and, except in cases of articles and materials specified by the Railroad and not manufactured by the Builder, warrants the Equipment to be free from defects in material and workmanship under normal use and service, the liability of the Builder under this warranty being limited, as the Railroad may elect: (i) to repair of the defects at the Builder's plant; or (ii) to replacement of a defective part; or (iii) to the cost of repair or replacement according to the AAR Code of Rules Governinig Condition of and Repairs to Freight and Passenger Cars with Interchange of Traffic. The Builder shall be given reasonable opportunity to verify any claim of defects in workmanship or materials.

The foregoing warranty of the Builder shall begin at the time of delivery of a unit of the Equipment to the Railroad and terminate two years after such delivery. THE BUILDER MAKES NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. The Railroad's right under the foregoing warranty shall be its sole and exclusive remedy and the Builder will have no liability for lost profit or for indirect, incidental, consequential or commercial losses. This warranty is expressly in lieu of all other warranties express or implied on the part of the Builder, except for the patent indemnification included in Article 14 of this Agreement. The Builder neither assumes nor authorizes any person to assume for it any other warranty liability in connection with the construction and delivery of the Equipment.

The Builder further agrees with the Railroad that neither the inspection as provided in Article 3 of the Agreement nor any examination nor the acceptance of any units of the Equipment as provided in said Article 3 shall be deemed a waiver or a modification by the Railroad of any of its rights under this Item 2.

The Builder will hold harmless the Railroad from claims, costs and liability to the Builder's employees arising out of and in the course of their employment and while on the Railroad's premises or equipment except when traveling as revenue passengers on the Railroad's trains.

(f) (ACF Industries, Incorporated): The Builder warrants that the Equipment will be built in accordance with the requirements, specifications and standards set forth in Article 2 of the Conditional Sale Agreement to which this Schedule is attached (hereinafter called this Agreement) and warrants the Equipment will be free from defects in material (except as to specialties incorporated therein which were specified or supplied by the Railroad and not manufactured by the Builder) and

workmanship under normal use and service, the Builder's obligation under this Item 2 being limited to making good at its factory any part or parts of any unit of the Equipment which shall be returned to the Builder with transportation charges prepaid, within one year after the delivery of such unit to the Railroad, and which the Builder's examination shall disclose to its satisfaction to have been thus defective. The foregoing warranty of the Builder is expressly in lieu of all other warranties, express or implied, including any implied warranty of merchantability or fitness for a particular purpose, and of all other obligations or liabilities under Articles 2, 3, 4 and 14 of the Agreement, and the Builder neither assumes nor authorizes any person to assume for it any other liability in connection with the construction and delivery of the Equipment except as aforesaid.

The Builder further agrees that neither the inspection as provided in Article 3 of this Agreement nor any examination nor the acceptance of any units of the Equipment as provided in said Article 3 shall be deemed a waiver or a modification by the Owner-Trustee of any of its rights under this Item 2.

7822
RECORDATION NO. _____ Filed & Recorded
FEB 6 1975 -10 55 AM
INTERSTATE COMMERCE COMMISSION

CONDITIONAL SALE AGREEMENT

Dated as of January 15, 1975

Among

GENERAL MOTORS CORPORATION
(Electro-Motive Division),
FMC CORPORATION,
PULLMAN INCORPORATED (Pullman Standard division)
GENERAL ELECTRIC COMPANY,
PACCAR INC,
ACF INDUSTRIES, INCORPORATED

and

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY

CONDITIONAL SALE AGREEMENT dated as of January 15, 1975, among each of the corporations named in Item 1 of Schedule A hereto and THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, a Delaware corporation (hereinafter called the Railroad).

WHEREAS each of the corporations named in Item 1 of Schedule A hereto severally have agreed to construct, sell and deliver to the Railroad, and the Railroad has agreed to purchase, the equipment described in Schedule B hereto (hereinafter called the Equipment);

NOW, THEREFORE, in consideration of the mutual promises, covenants and agreements hereinafter set forth, the parties hereto do hereby agree as follows:

ARTICLE 1. Certain Definitions; Obligations of Builders Several; Additional Agreements. The term "Vendor", whenever used in this Agreement, means, before any assignment of any of their rights hereunder, the respective corporations named in Item 1 of Schedule A hereto and any successor or successors for the time being to their respective manufacturing properties and businesses, and, after any such assignment, both any assignee or assignees for the time being of such particular assigned rights as regards such rights, and also any assignor as regards any rights hereunder that are retained or excluded from any assignment. Whenever the term "Vendor" refers to a corporation named in Item 1 of Schedule A hereto, such term shall mean any or all such corporations, as the context may require. The term "Builder", whenever used in this Agreement, means, both before and after any such assignment, each of the respective corporations (as to the units of Equipment to be constructed by such corporation and sold hereunder) named in Item 1 of Schedule A hereto and any successor or successors for the time being to their respective manufacturing properties and businesses.

The rights and obligations of the Builders under this Agreement are several in accordance with their interests and not joint. Accordingly, whenever this Agreement, by the use of such designation as "the Vendor", "such Builder" or other similar term, confers a right or imposes an obligation upon any corporation named in Item 1 of Schedule A hereto or its successor, such right or obligation shall be

construed to accrue to or to be enforceable against only the specific corporation furnishing the units of Equipment giving rise to such right or obligation and its successors as herein provided.

Additional Agreements, if any, set forth in Schedule A hereto shall be deemed to be a part of this Agreement as fully as though set forth in full in this instrument.

ARTICLE 2. Construction and Sale. Pursuant to this Agreement, each Builder shall construct the units of the Equipment to be constructed by it as described in Schedule B hereto (such Equipment with respect to each Builder being hereinafter sometimes called its Equipment) and will sell and deliver to the Railroad, and the Railroad will purchase from such Builder and accept delivery of and pay for (as hereinafter provided), such Equipment, each unit of which shall be constructed in accordance with the specifications set forth therefor in Schedule B hereto and in accordance with such modifications thereof as may be agreed upon in writing between such Builder and the Railroad (which specifications and modifications, if any, are hereinafter called the Specifications). The design, quality and component parts of each unit of the Equipment shall conform, on the date of completion of manufacture of each thereof, to all Department of Transportation and Interstate Commerce Commission requirements and specifications and to all standards recommended by the Association of American Railroads reasonably interpreted as being applicable to equipment of the character of such units of the Equipment and each unit of the Equipment (except to the extent, if any, referred to in Schedule A hereto and/or in Article 8 hereof) will be new railroad equipment.

ARTICLE 3. Inspection and Delivery. Each Builder will deliver the units of its Equipment to the Railroad at the place or places specified in Schedule B hereto (or if Schedule B does not specify a place or places, at the place or places designated from time to time by the Railroad), freight charges, if any, prepaid, in accordance with the delivery schedule set forth in Schedule B hereto; provided, however, that no Builder shall have any obligation to deliver any unit of its Equipment hereunder at any time after the commencement of any proceedings specified in clause (c) or (d) of Article 16 hereof or if any event of default (as described in Article 16 hereof), or event which with lapse of time and/or demand would constitute such an event of default, shall have occurred.

Each Builder's obligation as to time of delivery is subject, however, to delays resulting from causes beyond the Builder's reasonable control, including but not limited to acts of God, acts of government such as embargoes, priorities and allocations, war or war conditions, riot or civil commotion, sabotage, strikes, differences with workmen, accidents, fire, flood, explosion, damage to plant, equipment or facilities, delays in receiving necessary materials or delays of carriers or subcontractors.

Notwithstanding the preceding provisions of this Article 3, any Equipment not delivered, accepted and settled for pursuant to Article 4 hereof on or before August 31, 1975, shall be excluded herefrom. If any unit or units of Equipment shall be excluded from this Agreement pursuant to the immediately preceding sentence, the Builder or Builders of such unit or units and the Railroad shall execute an agreement supplemental hereto limiting this Agreement to the units of Equipment not so excluded herefrom. If a Builder's failure to deliver Equipment so excluded from this Agreement resulted from one or more of the causes set forth in the immediately preceding paragraph, the Railroad shall nevertheless be obligated to accept such Equipment and pay the full purchase price therefor, determined as provided in this Agreement, if and when such Equipment shall be completed and delivered by such Builder, such payment to be in cash on the delivery of such Equipment, either directly or, in case the Railroad shall arrange therefor, by means of a conditional sale agreement, equipment trust or such other appropriate method of financing as the Railroad shall determine and as shall be reasonably acceptable to such Builder.

During construction, the Equipment shall be subject to inspection and approval by the authorized inspectors of the Railroad and each Builder shall grant to such authorized inspectors reasonable access to its plant. Each Builder agrees to inspect all materials used in the construction of the Equipment in accordance with the standard quality control practices of such Builder. Upon completion of each unit or of a number of units of the Equipment, such unit or units shall be presented to an inspector of the Railroad for inspection at the place specified for delivery of such unit or units, and if each such unit conforms to the Specifications, requirements and standards applicable thereto, such inspector or an authorized representative of the Railroad shall execute and deliver to such Builder a certificate of acceptance (hereinafter called the Certificate of Accep-

tance) stating that such unit or units have been inspected and accepted on behalf of the Railroad and are marked in accordance with Article 7 hereof; provided, however, that such Builder shall not thereby be relieved of its warranty referred to in Article 14 hereof.

On delivery of each such unit hereunder at the place specified for delivery, the Railroad will assume the responsibility and risk of, and shall not be released from its obligations hereunder in the event of, any damage to or the destruction or loss of such unit; provided, however, that such delivery shall not thereby relieve a Builder of its warranty referred to in Article 14 hereof.

ARTICLE 4. Purchase Price and Payment. The base price or prices per unit of the Equipment are set forth in Schedule B hereto. Such base price or prices are subject to such increase or decrease as may be agreed to by the Builder thereof and the Railroad. The term "Purchase Price" as used herein shall mean the base price or prices as so increased or decreased. If the aggregate Purchase Price of Equipment for which settlement has been made under this Agreement is in an amount not less than $50,250,000, the Railroad may, at its option, exclude from this Agreement any unit or units of Equipment for which settlement has not been made and the appropriate Builder or Builders of such unit or units (and any assignee of such Builder or Builders) shall, upon request of the Railroad enter into an agreement supplemental hereto evidencing such exclusion. The Railroad agrees to purchase any such unit or units so excluded from this Agreement and to pay the Builder in cash on the date such unit or units would otherwise have been settled for under this Agreement either directly, or, if the Builder and the Railroad shall mutually agree, by means of a conditional sale, equipment trust or other appropriate method of financing.

For the purpose of making settlement, the Equipment shall be divided into such number of groups (not more than three) of units of the Equipment, delivered to and accepted by the Railroad (each such group being hereinafter called a Group), as the respective Builder, the Railroad and the Vendor may agree to.

The Railroad hereby acknowledges itself to be indebted to the Vendor in the amount of, and hereby promises to pay in cash to the Vendor at such place as the Vendor

may designate, the Purchase Price of the Equipment, as follows:

(a) on each Closing Date (as hereinafter defined) the amount, if any, by which (x) the aggregate Purchase Price of all units of the Equipment for which settlement has theretofore and is then being made, as stated in the invoice or invoices presented in respect of such Closing Date (said invoiced prices being hereinafter called the Invoiced Purchase Prices), exceeds (y) the sum of $50,000,000 and any amount or amounts previously paid or payable with respect to the Invoiced Purchase Prices pursuant to this subparagraph (a); and

(b) in 15 consecutive equal (to the nearest multiple of $1,000, except for appropriate adjustment of the final instalment in case the amount payable pursuant to this subparagraph (b) shall not, when divided by 15, result in an amount ending in a multiple of $1,000) annual instalments, as hereinafter provided, an amount equal to the aggregate of the Invoiced Purchase Prices for all the Equipment less the amount paid or payable with respect thereto pursuant to subparagraph (a) of this paragraph (the aggregate of said instalments being hereinafter called the Conditional Sale Indebtedness).

In the event that on any Closing Date the final Purchase Price of any Group has not been finally determined, the invoice presented may be a preliminary invoice, subject to upward adjustment upon determination of the final Purchase Price, and a supplemental invoice may be presented by the Builder at least ten days prior to any subsequent Closing Date for settlement on such subsequent Closing Date for any increase in the Purchase Price; it being understood and agreed by the Builders that any preliminary invoice or invoices presented by the Builders in respect of any Group shall be in amount not in excess of the final Purchase Price of such Group.

The instalments of the Conditional Sale Indebtedness payable pursuant to subparagraph (b) of the third paragraph of this Article 4 shall be payable annually on May 15 in each year commencing on May 15, 1976, to and including May 15, 1990. The unpaid portion of the Conditional Sale Indebtedness shall bear interest from the respective Closing Dates on which such indebtedness was incurred at the rate of 9-3/4% per annum. Such interest shall be payable, to the extent accrued, on May 15 and November 15 in each year, commencing May 15, 1975.

The term "Closing Date" with respect to any Group of the Equipment shall mean March 3, 1975, and such other dates (after March 3, 1975, and prior to August 31, 1975,) not more than 10 business days following presentation by a Builder to the Railroad of the invoice and the Certificate or Certificates of Acceptance for such Group, as shall be fixed by the Railroad by written notice delivered to the Vendor at least six business days prior to the Closing Date designated therein; it being understood and agreed, however, that the aggregate Purchase Price of all Equipment settled for on Closing Dates prior to April 1, 1975, shall not exceed $26,000,000. The term "business days" as used herein means calendar days, excluding Saturdays, Sundays and any other day on which banking institutions in Chicago, Illinois, or New York, New York, are authorized to remain closed.

All interest under this Agreement shall be calculated on the basis of a 360-day year of twelve 30-day months.

The Railroad will pay, to the extent legally enforceable, interest at the rate of 10-3/4% per annum upon all amounts remaining unpaid after the same shall have become due and payable pursuant to the terms hereof, anything herein to the contrary notwithstanding.

All payments provided for in this Agreement shall be made in such coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts. Except as provided in Article 8 hereof, the Railroad shall not have the privilege of prepaying any instalment of its indebtedness hereunder prior to the date it becomes due.

In the event the Vendor, pursuant to Article 15 hereof, assigns the right to receive the payments herein provided to be made by the Railroad, the assignee thereof may request the Railroad to make and the Railroad shall make such payments to it at such address as shall be supplied to the Railroad by the assignee.

ARTICLE 5. Taxes. All payments to be made by the Railroad hereunder will be free of expense to the Vendor for collection or other charges and will be free of expense to the Vendor with respect to the amount of any local, state, federal or foreign taxes (other than net income, gross receipts [except gross receipts taxes in the nature of or in lieu of sales or use taxes], excess profits and similar taxes) or license fees, assessments, charges, fines or penal-

ties hereafter levied or imposed upon or in connection with or measured by, this Agreement or any sale, use, payment, shipment, delivery or transfer of title under the terms hereof (all such expenses, taxes, license fees, assessments, charges, fines and penalties being hereinafter called impositions), all of which impositions the Railroad assumes and agrees to pay on demand. The Railroad will also pay promptly all impositions which may be imposed upon the Equipment delivered to it or for the use or operation thereof or upon the earnings arising therefrom or upon the Vendor solely by reason of its ownership thereof and will keep at all times all and every part of the Equipment free and clear of all impositions which might in any way affect the title of the Vendor or result in a lien upon any part of the Equipment; provided, however, that the Railroad shall be under no obligation to pay any impositions of any kind so long as it is contesting in good faith and by appropriate legal proceedings such impositions and the nonpayment thereof does not, in the opinion of the Vendor, adversely affect the property or rights of the Vendor in or to the Equipment or otherwise under this Agreement. If any such impositions shall have been charged or levied against the Vendor directly and paid by the Vendor, the Railroad shall reimburse the Vendor upon presentation of an invoice therefor, and any amounts so paid by the Vendor shall be secured by and under this Agreement; provided, however, that the Railroad shall not be obligated to reimburse the Vendor for any impositions so paid unless the Vendor shall have been legally liable with respect thereto (as evidenced by an opinion of counsel for the Vendor) or unless the Railroad shall have approved the payment thereof.

ARTICLE 6. Title to the Equipment. The Vendor shall and hereby does retain the full legal title to and property in the Equipment until the Railroad shall have made all its payments under this Agreement and shall have kept and performed all its agreements herein contained, notwithstanding the delivery of the Equipment to and the possession and use thereof by the Railroad as provided in this Agreement. Any and all additions to the Equipment and any and all replacements of the Equipment and of parts thereof and additions thereto shall constitute accessions to the Equipment and shall be subject to all the terms and conditions of this Agreement and included in the term "Equipment" as used in this Agreement.

Except as otherwise specifically provided in Article 8 hereof, when and only when the full indebtedness in

respect of the Purchase Price of the Equipment, together with interest and all other payments as herein provided, shall have been paid, and all the Railroad's obligations herein contained shall have been performed by the Railroad, absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Railroad without further transfer or action on the part of the Vendor. However, the Vendor, if so requested by the Railroad at that time, will (a) execute a bill or bills of sale for the Equipment transferring its title thereto and property therein to the Railroad, or upon its order, free of all liens, security interests and other encumbrances created or retained hereby and deliver such bill or bills of sale to the Railroad at its address referred to in Article 21 hereof, (b) execute and deliver at the same place, for filing, recording or depositing in all necessary public offices, such instrument or instruments in writing as may be necessary or appropriate in order then to make clear upon the public records the title of the Railroad to the to the Equipment and (c) pay to the Railroad any money paid to the Vendor pursuant to Article 8 hereof and not theretofore applied as therein provided. The Railroad hereby waives and releases any and all rights, existing or that may be acquired, in or to the payment of any penalty, forfeit or damages for failure to execute and deliver such bill or bills of sale or instrument or instruments or to file any certificate of payment in compliance with any law or statute requiring the filing of the same, except for failure to execute and deliver such bill or bills of sale or instrument or instruments or to file such certificate within a reasonable time after written demand by the Railroad.

ARTICLE 7. Marking of the Equipment. The Railroad will cause each unit of the Equipment to be kept numbered with its identifying number as set forth in Schedule B hereto, or in the case of Equipment not there listed such identifying number as shall be set forth in any amendment or supplement hereto extending this Agreement to cover such Equipment, and will keep and maintain, plainly, distinctly, permanently and conspicuously marked on each side of each unit, in letters not less than one inch in height, the words "Ownership subject to a Security Interest Filed under the Interstate Commerce Act, Section 20c" or other appropriate markings approved by the Vendor, with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the Vendor's title to and property in the Equipment and its rights under this Agreement. The

Railroad will not place any such unit in operation or exercise any control or dominion over the same until such markings have been made thereon and will replace promptly any such markings which may be removed, defaced or destroyed. The Railroad will not change the number of any unit of the Equipment except in accordance with a statement of new number or numbers to be substituted therefor, which statement previously shall have been filed with the Vendor by the Railroad and filed, recorded and deposited by the Railroad in all public offices where this Agreement shall have been filed, recorded and deposited.

Except as provided in the immediately preceding paragraph, the Railroad will not allow the name of any person, association or corporation to be placed on any unit of the Equipment as a designation that might be interpreted as a claim of ownership; provided, however, that the Railroad may cause the Equipment to be lettered with the names or initials or other insignia of the Railroad or its affiliates.

ARTICLE 8. Casualty Occurrences. In the event that any unit of the Equipment shall be worn out, lost, stolen, destroyed, irreparably damaged or otherwise rendered permanently unfit for use from any cause whatsoever, or taken or requisitioned by condemnation or otherwise (such occurrences being hereinafter called Casualty Occurrences), the Railroad shall promptly (after it has knowledge of such Casualty Occurrence) and fully inform the Vendor in regard thereto. When the aggregate Casualty Value (as defined herein) of all units having suffered a Casualty Occurrence (exclusive of units having suffered a Casualty Occurrence with respect to which a payment shall have been made to the Vendor pursuant to this Article 8) hereunder shall exceed $250,000 (or such lesser amount as the Railroad may elect), the Railroad, within 90 days after the Railroad has knowledge of such event, shall file with the Vendor a certificate of an officer of the Railroad setting forth the Casualty Value of each unit of the Equipment having suffered a Casualty Occurrence and shall pay to the Vendor a sum equal to the aggregate Casualty Value as of the date of such payment of such unit or units of the Equipment having suffered a Casualty Occurrence, together with interest on such sum so being prepaid accrued to the date of such prepayment, but without premium, (the Railroad hereby agreeing to make such payment of accrued interest to the Vendor at the time it makes payment of such Casualty Value to the Vendor); provided, however, if and so long as no event of default

shall have occurred and be continuing hereunder, in lieu of making all or any portion of such payment to the Vendor, the Railroad may, on or before the expiration of such 90-day period, cause to be transferred to the Vendor a replacement unit or units of standard gauge railroad equipment (other than passenger or work equipment of types other than locomotives) and receive credit against the Casualty Value payment it would otherwise have been required to make in an amount equal to the value threof. The value of any unit or units of replacement equipment shall be equal to the cost thereof, if new, as specified in the invoice therefor delivered to the Vendor or, if not new, the lesser of (y) the fair market value thereof or (z) the original cost thereof less depreciation at a rate equal to 1/15th of such cost for each year in service, all as set forth in a certificate of an officer of the Railroad delivered to the Vendor at the time of such replacement. Any unit of replacement equipment shall have a remaining useful life (as evidenced by a certificate of an operating officer at the Railroad) at least as long as that which the Equipment being replaced would have had but for the Casualty Occurrence. In case any money is applied to prepay indebtedness, it shall be so applied, together with the interest due thereon, on the business day next following receipt by the Vendor of the appropriate payment, to reduce instalments of the aggregate Conditional Sale Indebtedness thereafter falling due in the inverse order of maturity thereof without premium.

The Casualty Value of each unit of the Equipment (other than a replacement unit) shall be deemed to be that amount which bears the same ratio to the original Purchase Price thereof (less, in the event that the Railroad shall have made any payment or payments under the provisions of subparagraph (a) of the third paragraph of Article 4 hereof, an amount which bears the same ratio to the aggregate of all such payments as the original Purchase Price of such unit bears to the original aggregate Purchase Price of all the Equipment) as the unpaid Conditional Sale Indebtedness (without giving effect to any prepayments then or theretofore made pursuant to this Article 8) as of the date payment is made with respect to such Casualty Occurrence bears to the original Conditional Sale Indebtedness. The Casualty Value of each replacement unit shall be deemed to be that amount which bears the same ratio to the portion of the cost thereof paid by the Vendor as the unpaid Conditional Sale Indebtedness ness (without giving effect to any prepayments then or theretofore made pursuant to this Article 8) as of the date payment

is made with respect to such Casualty Occurrence bears to the unpaid Conditional Sale Indebtedness (without giving effect to any such prepayments) as of the date of acquisition by the Vendor of such replacement unit.

The Railroad will cause any replacement unit or units to be marked as provided in Article 7 hereof. Any and all such replacements of Equipment shall constitute accessions to the Equipment and shall be subject to all appropriate terms and conditions of this Agreement as though part of the original Equipment delivered hereunder and shall be included in the term "Equipment" as used in this Agreement. Title to all such replacement units shall be free and clear of all liens and encumbrances except the liens permitted by the second paragraph of Article 12 hereof and shall be taken initially and shall remain in the name of the Vendor subject to the provisions hereof, and the Railroad shall execute, acknowledge, deliver, file, record or deposit all such documents and do any and all such acts as may be necessary to cause such replacement units to come under and be subject to this Agreement. All such replacement units shall be guaranteed and warranted in like manner as is customary at the time for similar equipment. Whenever the Railroad shall cause to be transferred to the Vendor a unit or units of replacement Equipment, the Railroad shall deliver to the Vendor an executed counterpart of an opinion of counsel covering the matters set forth in this paragraph.

In order to facilitate the sale or other disposition of any Equipment suffering a Casualty Occurrence, in respect of which the Railroad shall have paid to the Vendor the Casualty Value and/or shall have caused to be transferred to the Vendor a unit or units of replacement Equipment, the Vendor shall, upon request of the Railroad, execute and deliver to the Railroad or the Railroad's vendee, assignee or nominee, a bill of sale (without warranties) for such Equipment, and such other documents as may be required to release such Equipment from the terms and scope of this Agreement, in such form as may be reasonably requested by the Railroad.

The Railroad will at all times prior to the payment in full of the Conditional Sale Indebtedness together with interest thereon and all other payments required hereby, at its own expense, cause to be carried and maintained insurance in respect of the Equipment consisting of locomotives at the time subject hereto, and public liability insurance,

in amounts and against risks customarily insured against by railroad companies on similar equipment, and in any event in amounts and against risks comparable to those insured against by the Railroad on equipment owned by it; provided, however, that the Railroad may act as self-insurer in respect of losses and damage not exceeding $3,000,000 in respect of any single occurrence.

ARTICLE 9. Maintenance; Compliance with Laws and Rules. The Railroad will at all times maintain the Equipment or cause the Equipment to be maintained in good order and repair at its own expense.

During the term of this Agreement, the Railroad will at all times comply in all respects with all laws of the jurisdictions in which its operations involving the Equipment may extend, with the interchange rules of the Asociation of American Railroads and with all lawful rules of the Department of Transportation, Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Equipment, to the extent that such laws and rules affect the title, operation or use of the Equipment, and in the event that such laws or rules require any alteration, replacement or addition of any part on any unit of the Equipment, the Railroad will conform therewith, at its own expense; provided, however, that the Railroad may, in good faith, contest the validity or application of any such law or rule in any reasonable manner which does not, in the opinion of the Vendor, adversely affect the property or rights of the Vendor under this Agreement.

ARTICLE 10. Reports and Inspections. On or before March 31 in each year, commencing with the calendar year 1976, the Railroad shall furnish to the Vendor an accurate statement signed by an officer of the Railroad (a) setting forth as at the preceding December 31 the amount, description and numbers of all units of the Equipment that have suffered a Casualty Occurrence during the preceding calendar year (or since the date of this Agreement in the case of the first such statement) or that have been withdrawn from use pending repairs (other than running repairs) and such other information regarding the condition and state of repair of the Equipment as the Vendor may reasonably request and (b) stating that, in the case of all Equipment repaired or repainted during the period covered by such statement, the numbers and markings required by Article 7 hereof have

been preserved or replaced. During the term of this Agreement, the Vendor shall have the right, by its agents, to inspect the Equipment and the Railroad's records with respect thereto at such times and locations as the Vendor may reasonably request.

The Railroad shall furnish (i) as soon as available and in any event within 60 days after the end of each quarterly period, except the last, of each fiscal year, a balance sheet of the Railroad (as filed with the Interstate Commerce Commission (hereinafter called the ICC)) as at the end of such period, and an income statement of the Railroad as filed with the ICC for the period beginning on the first day of such fiscal year and ending on the date of such balance sheet, setting forth comparative figures for the corresponding period of the preceding fiscal year, all in reasonable detail and certified by the principal accounting officer of the Railroad, and (ii) as soon as available and in any event within 120 days after the end of each fiscal year, a copy of the Railroad's annual report as filed with the ICC, which shall include the balance sheet, income statement and statement of retained income of the Railroad certified by the principal accounting officer of the Railroad and which shall be accompanied by a letter from the independent accountants for Santa Fe Industries, Inc., the parent of the Railroad, stating that such financial statements, restated to generally accepted accounting principles, were included in the certified consolidated financial statement of Santa Fe Industries, Inc., and that such certified financial statements are not qualified with respect to the Railroad and, in the event a restatement to generally accepted accounting principles is required, such letter shall be accompanied by a schedule which shall describe such restatement in reasonable detail.

ARTICLE 11. Possession and Use. The Railroad, so long as an event of default shall not have occurred under this Agreement and be continuing, shall be entitled to the possession of the Equipment and the use thereof upon the lines of railroad owned or operated by it either alone or jointly with others and whether under lease or otherwise, or upon the lines of railroad owned or operated by any railroad company controlled by, or under common control with, the Railroad, or over which it has trackage rights, or upon connecting and other carriers in the usual interchange of traffic, from and after delivery of the Equipment by the Builder to the Railroad, but only upon and subject to all the terms and conditions of this Agreement.

ARTICLE 12. Prohibition Against Liens. The Railroad will pay or discharge any and all sums claimed by any party from, through or under the Railroad or its successors or assigns which, if unpaid, might become a lien, charge or security interest on the Equipment, or any unit thereof, equal or superior to the Vendor's title thereto or property therein; provided, however, that the Railroad shall be under no obligation to pay or discharge any such claim so long as it is contesting in good faith and by appropriate legal proceedings such claim and the nonpayment thereof does not, in the opinion of the Vendor, adversely affect the property or rights of the Vendor in or to the Equipment or otherwise under this Agreement. Any amounts paid by the Vendor in discharge of liens, charges or security interests upon the Equipment shall be secured by and under this Agreement.

This covenant will not be deemed breached by reason of liens for taxes, assessments or governmental charges or levies, in each case not due and delinquent, or undetermined or inchoate materialmen's, mechanics', workmen's, repairmen's or other like liens arising in the ordinary course of business and, in each case, not delinquent.

ARTICLE 13. Railroad's Indemnities. The Railroad agrees to indemnify, protect and hold harmless the Vendor from and against all losses, damages, injuries, liabilities, claims and demands whatsoever, regardless of the cause thereof, and expenses in connection therewith, including counsel fees, arising out of retention by the Vendor of title to the Equipment, the use and operation thereof by the Railroad during the period when title thereto remains in the Vendor or the transfer of title to the Equipment by the Vendor pursuant to any of the provisions of this Agreement, except, however, any losses, damages, injuries, liabilities, claims and demands whatsoever arising out of any tort, breach of warranty or failure to perform any covenant hereunder by any Builder. This covenant of indemnity shall continue in full force and effect notwithstanding the full payment of all sums due under this Agreement, or the satisfaction, discharge or termination of this Agreement in any manner whatsoever.

ARTICLE 14. Patent Indemnities; Builder's Warranty of Material and Workmanship. Except in cases of articles or materials specified by the Railroad and not manufactured by a Builder and in cases of designs, systems, processes, formulae or combinations specified by the Railroad and not

developed or purported to be developed by any Builder, each Builder agrees to indemnify, protect and hold harmless the Railroad from and against any and all liability, claims, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Railroad, its assigns or the users of its respective Equipment because of the use in or about the construction or operation of any of the Equipment of any design, system, process, formula, combination, article or material which infringes or is claimed to infringe on any patent or other right. The Railroad likewise will indemnify, protect and hold harmless the Vendor from and against any and all liability, claims, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Vendor because of the use in or about the construction or operation of any of the Equipment of any article or material specified by the Railroad and not manufactured by a Builder or of any design, system, process, formula or combination specified by the Railroad and not developed or purported to be developed by a Builder which infringes or is claimed to infringe on any patent or other right. Each Builder agrees to and hereby does, to the extent legally possible without impairing any claim, right or cause of action hereinafter referred to, assign, set over and deliver to the Railroad every claim, right and cause of action which such Builder has or hereafter shall have against the seller or sellers of any designs, systems, processes, formulae, combinations, articles or materials specified by the Railroad and purchased or otherwise acquired by such Builder for use in or about the construction or operation of any of the Equipment on the ground that any such design, system, process, formula, combination, article or material or operation thereof infringes or is claimed to infringe on any patent or other right. Each Builder further agrees to execute and deliver to the Railroad or the users of the Equipment all and every such further assurance as may be reasonably requested by the Railroad more fully to effectuate the assignment and delivery of every such claim, right and cause of action. Each Builder will give notice to the Railroad of any claim known to such Builder from which liability may be charged against the Railroad hereunder and the Railroad will give notice to the appropriate Builder of any claim known to the Railroad from which liability may be charged against any Builder hereunder. Such covenants of indemnity shall continue in full force and effect notwithstanding the full payment of all sums due under this Agreement, or the satisfaction,

discharge or termination of this Agreement in any manner whatsoever.

Each Builder's warranty of material and workmanship is set forth in Schedule A hereto.

ARTICLE 15. Assignments. The Railroad will not sell, assign, transfer or otherwise dispose of its rights under this Agreement or, except as provided in Article 11 hereof, transfer the right to possession of any unit of the Equipment without first obtaining the written consent of the Vendor. A sale, assignment, transfer or disposition to a railroad company organized under the laws of the United States of America or any of the states thereof which shall acquire all or substantially all the lines of railroad of the Railroad, and which, by execution of an appropriate instrument satisfactory to the Vendor, shall assume and agree to perform each of, and all, the obligations and covenants of the Railroad under this Agreement, shall not be deemed a breach of this covenant.

All or any of the rights, benefits and advantages of the Vendor under this Agreement, including the right to receive the payments herein provided to be made by the Railroad, may be assigned by the Vendor and reassigned by any assignee at any time or from time to time. No such assignment shall subject any assignee to, or relieve any Builder from, any of the obligations of such Builder to construct and deliver the Equipment in accordance with this Agreement or to respond to its respective warranties and indemnities contained or referred to in Article 14 hereof, or relieve the Railroad of any of its obligations to such Builders under Articles 2, 3, 4, 5, 13 and 14 hereof, Schedule A hereto and this Article 15 or of any other obligation which, according to its terms or context, is intended to survive an assignment.

Upon any such assignment either the assignor or the assignee shall give written notice to the Railroad, together with a counterpart or copy of such assignment, stating the identity and post office address of the assignee, and such assignee shall by virtue of such assignment acquire all the assignor's right, title and interest in and to the Equipment and this Agreement, or in and to a portion thereof, as the case may be, subject only to such reservations as may be contained in such assignment. From and after the receipt by the Railroadd of the notification of any such

assignment, all payments thereafter to be made by the Railroad under this Agreement shall, to the extent so assigned, be made to the assignee in such manner as it may direct.

The Railroad recognizes that it is the custom of railroad equipment manufacturers to assign conditional sale agreements and understands that the assignment of this Agreement, or of some of or all the rights of the Vendor hereunder, is contemplated. The Railroad expressly represents, for the purpose of assurance to any person, firm or corporation considering the acquisition of this Agreement or of all or any of the rights of the Vendor hereunder and for the purposes of inducing such acquisition, that in the event of such assignment by the Vendor as hereinbefore provided, the rights of such assignee to the entire unpaid indebtedness in respect of the Purchase Price or such part thereof as may be assigned, together with interest thereon, as well as any other rights hereunder which may be so assigned, shall not be subject to any defense, setoff, counterclaim or recoupment whatsoever arising out of any breach of any obligation of a Builder with respect to the Equipment or the manufacture, construction, delivery or warranty thereof, or with respect to any indemnity herein contained, nor subject to any defense, setoff, counterclaim or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to the Railroad by a Builder. Any and all such obligations, howsoever arising, shall be and remain enforceable by the Railroad against and only against the respective Builders.

The Railroad will (a) in connection with each settlement for the Equipment subsequent to such assignment, deliver to the assignee, at least five business days prior to the Closing Date for the Group fixed in the notice by the Railroad, all documents required by the terms of such assignment to be delivered to such assignee in connection with such settlement, in such number of counterparts or copies as may reasonably be requested, except for any opinion of counsel for such assignee, and (b) furnish to such assignee such number of counterparts of any other certificate or paper required by the Vendor as may reasonably be requested.

If this Agreement shall have been assigned by the Builders and the assignee shall not make payment to a Builder with respect to units of its Equipment as provided in the instrument making such assignment, such Builder will promptly notify the Railroad of such event and, if such

amount shall not have been previously paid by such assignee, the Railroad will, not later than 90 days after the date such payment was due, pay or cause to be paid to such Builder the aggregate unpaid Purchase Price of such units of its Equipment, together with interest from the day such payment was due to the date of payment by the Railroad at the highest prime rate of interest charged by any of the four New York City banks having the largest total assets, in effect on the date such payment was due.

ARTICLE 16. Defaults. In the event that any one or more of the following events of default shall occur and be continuing, to wit:

(a) the Railroad shall fail to pay in full any indebtedness in respect of the Purchase Price of the Equipment or any other sum payable by the Railroad as provided in this Agreement within ten days after payment thereof shall be due hereunder; or

(b) the Railroad shall, for more than 30 days after the Vendor shall have demanded in writing performance thereof, fail or refuse to comply with any covenant, agreement, term or provision of this Agreement, or of any agreement entered into concurrently herewith relating to the financing of the Equipment on its part to be kept or performed or to make provision satisfactory to the Vendor for such compliance; or

(c) a petition for reorganization under Section 77 of the Bankruptcy Act, as now constituted or as said Section 77 may be hereafter amended, shall be filed by or against the Railroad and, unless such petition shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Railroad under this Agreement shall not have been (and shall not continue to have been) duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees appointed (whether or not subject to ratification) in such proceedings in such manner that such obligations shall have the same status as obligations incurred by such trustee or trustees, within 30 days after such appointment, if any, or 60 days after such petition shall have been filed, whichever shall be earlier; or

(d) any other proceedings shall be commenced by or against the Railroad for any relief under any bankruptcy or insolvency law, or law relating to the relief of debtors, readjustments of indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which does not permit any readjustment of the indebtedness payable hereunder), and, unless such proceedings shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Railroad under this Agreement shall not have been (and shall not continue to have been) duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed (whether or not subject to ratification) for the Railroad or for its property in connection with any such proceedings in such manner that such obligations shall have the same status as obligations incurred by such trustee or trustees or receiver or receivers, within 30 days after such appointment, if any, or 60 days after such proceedings shall have been commenced, whichever shall be earlier; or

(e) the Railroad shall make or suffer any unauthorized assignment or transfer of this Agreement or any interest herein or any unauthorized transfer of the right to possession of any unit of the Equipment;

then at any time after the occurrence of such an event of default the Vendor may, upon written notice to the Railroad and upon compliance with any mandatory legal requirements then in force and applicable to such action by the Vendor, declare (hereinafter called a Declaration of Default) the entire indebtedness in respect of the Purchase Price of the Equipment, together with the interest thereon then accrued and unpaid, immediately due and payable, without further demand, and thereafter the aggregate of the unpaid balance of such indebtedness and interest shall bear interest from the date of such Declaration of Default at the rate per annum specified in Article 4 hereof as being applicable to amounts remaining unpaid after becoming due and payable, to the extent legally enforceable. The Vendor shall thereupon be entitled to recover judgment for the entire unpaid balance of the indebtedness in respect of the Purchase Price of the Equipment so payable, with interest as aforesaid, and to collect such judgment out of any property of

the Railroad wherever situated. The Railroad shall promptly notify the Vendor of any event which has come to its attention which constitutes, or which with the giving of notice and/or lapse of time could constitute, an event of default under this Agreement.

The Vendor may at its election waive any such event of default and its consequences and rescind and annul any Declaration of Default by notice to the Railroad in writing to that effect, and thereupon the respective rights of the parties shall be as they would have been if no such event of default had occurred and no Declaration of Default had been made. Notwithstanding the provisions of this paragraph, it is expressly understood and agreed by the Railroad that time is of the essence of this Agreement and that no such waiver, rescission or annulment shall extend to or affect any other or subsequent default or impair any rights or remedies consequent thereon.

ARTICLE 17. Remedies. At any time during the continuance of a Declaration of Default, the Vendor may, subject to compliance with any mandatory legal requirements then in force and applicable to the action to be taken by the Vendor, take or cause to be taken by its agent or agents immediate possession of the Equipment, or one or more of the units thereof, without liability to return to the Railroad any sums theretofore paid and free from all claims whatsoever, except as hereinafter in this Article 17 expressly provided, and may remove the same from possession and use of the Railroad or any other person and for such purpose may enter upon the Railroad's premises or any other premises where the Equipment may be located and may use and employ in connection with such removal any supplies, services and aids and any available trackage and other facilities or means of the Railroad.

In case the Vendor shall demand possession of the Equipment pursuant to this Agreement and shall reasonably designate a point or points upon the premises of the Railroad for the delivery of the Equipment to the Vendor, the Railroad shall, at its own expense, forthwith and in the usual manner (including, but not by way of limitation, giving prompt telegraphic and written notice to the Association of American Railroads and all railroads to which any part of the Equipment has been interchanged to return the Equipment so interchanged), cause (a) the Equipment to be moved to such point or points on its lines as shall

be designated by the Vendor and shall there deliver the Equipment or cause it to be delivered to the Vendor and (b) the Equipment to be moved to such interchange point or points of the Railroad as shall be designated by the Vendor upon any sale, lease or other disposal of all or any part of the Equipment by the Vendor. At the option of the Vendor, the Vendor may keep the Equipment on any of the lines or premises of the Railroad until the Vendor shall have leased, sold or otherwise disposed of the same, and for such purpose the Railroad agrees to furnish, without charge for rent or storage, the necessary facilities at any point or points selected by the Vendor reasonably convenient to the Railroad and, at the Railroad's risk, to permit inspection of the Equipment by the Vendor, the Vendor's representatives and prospective purchasers and users. This agreement to deliver the Equipment and furnish facilities as hereinbefore provided is of the essence of the agreement between the parties, and, upon application to any court of equity having jurisdiction in the premises, the Vendor shall be entitled to a decree against the Railroad requiring specific performance hereof. The Railroad hereby expressly waives any and all claims against the Vendor and its agent or agents for damages of whatever nature in connection with any retaking of any unit of the Equipment in any reasonable manner.

At any time during the continuance of a Declaration of Default, the Vendor (after retaking possession of the Equipment as hereinbefore in this Article 17 provided) may at its election and upon such notice as is hereinafter set forth retain the Equipment in satisfaction of the entire indebtedness in respect of the Purchase Price of the Equipment and make such disposition thereof as the Vendor shall deem fit. Written notice of the Vendor's election to retain the Equipment shall be given to the Railroad by telegram or registered mail, addressed as provided in Article 21 hereof, and to any other persons to whom the law may require notice, within 30 days after such Declaration of Default. In the event that the Vendor should elect to retain the Equipment and no objection is made thereto within the 30-day period described in the second proviso below, all the Railroad's rights in the Equipment shall thereupon terminate and all payments made by the Railroad may be retained by the Vendor as compensation for the use of the Equipment by the Railroad; <u>provided, however</u>, that if the Railroad, before the expiration of the 30-day period described in the proviso below,

should pay or cause to be paid to the Vendor the total unpaid balance of the indebtedness in respect of the Purchase Price of the Equipment, together with interest thereon accrued and unpaid and all other payments due under this Agreement as well as expenses of the Vendor in retaking possession of, removing and storing the Equipment and the Vendor's reasonable attorneys' fees, then in such event absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Railroad; provided, further, that if the Railroad or any other persons notified under the terms of this paragraph object in writing to the Vendor within 30 days from the receipt of notice of the Vendor's election to retain the Equipment, then the Vendor may not so retain the Equipment, but shall sell, lease or otherwise dispose of it or continue to hold it pending sale, lease or other disposition as hereinafter provided or as may otherwise be permitted by law. If the Vendor shall have given no notice to retain as hereinabove provided or notice of intention to dispose of the Equipment in any other manner, it shall be deemed to have elected to sell the Equipment in accordance with the provisions of this Article 17.

At any time during the continuance of a Declaration of Default, the Vendor, with or without retaking possession thereof, at its election and upon reasonable notice to the Railroad and to any other persons to whom the law may require notice of the time and place, may sell the Equipment, or any unit thereof, free from any and all claims of the Railroad or any other party claiming from, through or under the Railroad, at law or in equity, at public or private sale and with or without advertisement as the Vendor may determine; provided, however, that if, prior to such sale and prior to the making of a contract for such sale, the Railroad should tender full payment of the total unpaid balance of the indebtedness in respect of the Purchase Price of the Equipment, together with interest thereon accrued and unpaid and all other payments due under this Agreement as well as expenses of the Vendor in retaking possession of, removing, storing, holding and preparing the Equipment for, and otherwise arranging for, the sale and the Vendor's reasonable attorneys' fees, then in such event absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Railroad. The proceeds of such sale, less the attorneys' fees and any other expenses incurred by the Vendor in retaking possession of, removing, storing,

holding, preparing for sale and selling the Equipment, shall be credited on the amount due to the Vendor under the provisions of this Agreement.

Any sale hereunder may be held or conducted at such place or places and at such time or times as the Vendor may specify, in one lot and as an entirety or in separate lots and without the necessity of gathering at the place of sale the property to be sold, and in general in such manner as the Vendor may determine. The Vendor or the Railroad may bid for and become the purchaser of the Equipment, or any unit thereof, so offered for sale. The Railroad shall be given written notice of such sale not less than ten days prior thereto, by telegram or registered mail addressed to the Railroad as provided in Article 21 hereof. If such sale shall be a private sale (which shall be deemed to mean only a sale where an advertisement for bids has not been published in a newspaper of general circulation or a sale where less than 40 railroads have been solicited in writing to submit bids), it shall be subject to the right of the Railroad to purchase or provide a purchaser, within ten days after notice of the proposed sale price, at the same price offered by the intending purchaser or a better price. In the event that the Vendor shall be the purchaser of the Equipment, it shall not be accountable to the Railroad (except to the extent of surplus money received as hereinafter provided in this Article 17), and in payment of the purchase price therefor the Vendor shall be entitled to have credited on account thereof all or any part of the sums due to the Vendor from the Railroad hereunder. From and after the date of any such sale, the Railroad shall pay to the Vendor the per diem interchange for each unit of Equipment which shall not have been assembled, as hereinabove provided, by the date of such sale for each day from the date of such sale to the date of delivery to the Purchaser at such sale.

Each and every power and remedy hereby specifically given to the Vendor shall be in addition to every other power and remedy hereby specifically given or now or hereafter existing at law or in equity, and each and every power and remedy may be exercised from time to time and simultaneously and as often and in such order as may be deemed expedient by the Vendor. All such powers and remedies shall be cumulative, and the exercise of one shall not be deemed a waiver of the right to exercise any other or others. No delay or omission of the Vendor in the exercise of any such power or

remedy and no renewal or extension of any payments due hereunder shall impair any such power or remedy or shall be contrued to be a waiver of any default or an acquiescence therein. Any extension of time for payment hereunder or other indulgence duly granted to the Railroad shall not otherwise alter or affect the Vendor's rights or the Railroad's obligations hereunder. The Vendor's acceptance of any payment after it shall have become due hereunder shall not be deemed to alter or affect the Railroad's obligations or the Vendor's rights hereunder with respect to any subsequent payments or default therein.

If, after applying all sums of money realized by the Vendor under the remedies herein provided, there shall remain any amount due to it under the provisions of this Agreement, the Railroad shall pay the amount of such deficiency to the Vendor upon demand, together with interest from the date of such demand to the date of payment by the Railroad at the rate per annum set forth in Article 4 hereof applicable to amounts remaining unpaid after becoming due and payable. If the Railroad shall fail to pay such deficiency, the Vendor may bring suit therefor and shall be entitled to recover a judgment therefor against the Railroad. If, after applying as aforesaid all sums realized by the Vendor, there shall remain a surplus in the possession of the Vendor, such surplus shall be paid to the Railroad.

The Railroad will pay all reasonable expenses, including attorneys' fees, incurred by the Vendor in enforcing its remedies under the terms of this Agreement. In the event that the Vendor shall bring any suit to enforce any of its rights hereunder and shall be entitled to judgment, then in such suit the Vendor may recover reasonable expenses, including attorneys' fees, and the amount thereof shall be included in such judgment.

The foregoing provisions of this Article 17 are subject in all respects to all mandatory legal requirements at the time in force and applicable thereto.

Article 18. Applicable State Laws. Any provision of this Agreement prohibited by any applicable law of any jurisdiction (which is not overridden by applicable federal law) shall as to such jurisdiction be ineffective, without modifying the remaining provisions of this Agreement. Where, however, the conflicting provisions of any such applicable

law may be waived, they are hereby waived by the Railroad to the full extent permitted by law, it being the intention of the parties hereto that this Agreement shall be deemed to be a conditional sale and enforced as such.

Except as otherwise provided in this Agreement, the Railroad, to the full extent permitted by law, hereby waives all statutory or other legal requirements for any notice of any kind, notice of intention to take possession of or to sell or lease the Equipment, or any unit thereof, and any other requirements as to the time, place and terms of the sale or lease thereof, any other requirements with respect to the enforcement of the Vendor's rights under this Agreement and any and all rights of redemption.

ARTICLE 19. Recording. The Railroad will cause this Agreement, any assignments hereof and any amendments or supplements hereto or thereto to be filed and recorded with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act; and the Railroad will from time to time do and perform any other act and will execute, acknowledge, deliver, file, register, deposit and record any and all further instruments required by law or reasonably requested by the Vendor for the purpose of proper protection, to the satisfaction of counsel for the Vendor, of its title to the Equipment and its rights under this Agreement or for the purpose of carrying out the intention of this Agreement; and the Railroad will promptly furnish to the Vendor certificates or other evidence of such filing, registering, depositing and recording satisfactory to the Vendor.

ARTICLE 20. Payment of Expenses. The Railroad will pay all reasonable costs and expenses (other than the fees and expenses of counsel for any Builder) incident to this Agreement and the first assignment of this Agreement, and any instrument supplemental or related hereto or thereto, including all fees and expenses of counsel for the first assignee of this Agreement, and all reasonable costs and expenses in connection with the transfer by any party of interests acquired in such first assignment. If the first assignee is not an agent, such assignee may appoint a bank or trust company located in either the Borough of Manhattan, City and State of New York, or Chicago, Illinois, having capital and surplus aggregating at least $40,000,000 to act as agent on its behalf to hold all the right, title and interests of the Builders under this Agreement assigned

to it, all upon and subject to the terms and conditions provided for in a written agreement to be entered into by the first assignee and such agent in form and substance satisfactory to the first assignee and such agent; and the Railroad hereby agrees to pay all reasonable costs and expenses of such Agent. Prior to appointing such an agent, the assignee shall consult with the Railroad and shall give reasonable consideration to the recommendations of the Railroad as to the bank or trust company to be appointed.

ARTICLE 21. Notice. Any notice hereunder to any of the parties designated below shall be deemed to be properly served if delivered or mailed to it at its chief place of business at the following specified addresses:

(a) to the Railroad, at 80 East Jackson Street, Chicago, Illinois 60604, attention of R. W. Harper, Vice President-Finance.

(b) to a Builder, at its address specified in Item 1 of Schedule A hereto, and

(c) to any assignee of the Vendor or of the Railroad, at such address as may have been furnished in writing to each of the other parties hereto by such assignee,

or at such other address as may have been furnished in writing by such party to the other parties to this Agreement.

ARTICLE 22. Article Heading; Effect and Modification of Agreement. All article headings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

This Agreement, including the Schedules hereto, exclusively states the rights of the Vendor and the Railroad with respect to the Equipment and supersedes all other agreements, oral or written, with respect to the Equipment. No variation or modification of this Agreement and no waiver of any of its provisions or conditions shall be valid unless in writing and signed by duly authorized officers of the Vendor and the Railroad.

ARTICLE 23. Law Governing. The Railroad warrants that its chief place of business and its chief executive offices are located in the State of Illinois. The terms

of this Agreement and all rights and obligations hereunder shall be governed by the laws of the State of Illinois; provided, however, that the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act and such additional rights arising out of the filing, recording or deposit hereof, if any, and of any assignment hereof as shall be conferred by the laws of the several jurisdictions in which this Agreement or any assignment hereof shall be filed, recorded or deposited.

ARTICLE 24. Execution. This Agreement may be executed in any number of counterparts, and such counterparts together shall constitute but one and the same contract. It shall not be necessary that any counterpart be signed by all the parties so long as any counterpart be signed by the Railroad and one or more Builders. If this Agreement is assigned by any Builder, the original counterpart of this Agreement shall be deemed to be the counterpart executed by such Builder and delivered to such assignee. Each Builder shall be bound hereunder, notwithstanding the failure of any other Builder to execute and deliver this Agreement, or perform its obligations hereunder. Although this Agreement is dated, for convenience, as of the date first set forth above, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

IN WITNESS WHEREOF, the parties hereto, each pursuant to due corporate authority, have caused this instrument to be executed in their respective corporate names by their officers, thereunto duly authorized, and their respective corporate seals to be hereunto affixed, duly attested, all as of the date first above written.

GENERAL MOTORS CORPORATION
(Electro-Motive Division),

by

_____
Vice President

[Corporate Seal]

Attest:

_____
Assistant Secretary

FMC CORPORATION,

by

Vice President

[Corporate Seal]

Attest:

Robert L. Day

Assistant Secretary

PULLMAN INCORPORATED
(Pullman-Standard division),

by

Vice President

[Corporate Seal]

Attest:

Assistant Secretary

GENERAL ELECTRIC COMPANY,

by

Manager-Marketing,
Locomotive Products Department

[Corporate Seal]

Attest:

Attesting Secretary

PACCAR INC,

by

Vice President

[Corporate Seal]

Attest:

Assistant Secretary

ACF INDUSTRIES, INCORPORATED,

by

_____
Vice President

[Corporate Seal]

Attest:

_____
Assistant Secretary

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY,

by

Vice President-Finance

[Corporate Seal]

Attest:

Assistant Secretary

STATE OF ILLINOIS,)
) ss.:
COUNTY OF COOK,)

On this day of 1975, before me personally appeared , to me personally known, who, being by me duly sworn, says that he is a Vice President of GENERAL MOTORS CORPORATION (Electro-Motive Division), that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Notary Public

[Notarial Seal]

My Commission Expires

STATE OF ILLINOIS,)
) ss.:
COUNTY OF COOK,)

On this 7th day of February 1975, before me personally appeared Brauch, to me personally known, who, being by me duly sworn, says that he is a Vice President of FMC CORPORATION, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Laura E Pierce
Notary Public

[Notarial Seal]

My Commission Expires

My Commission Expires April 13 1976

STATE OF ILLINOIS,)
) ss.:
COUNTY OF COOK,)

On this day of 1975, before me personally appeared , to me personally known, who, being by me duly sworn, says that he is a Vice President of PULLMAN INCORPORATED (Pullman-Standard division), that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

_____
Notary Public

[Notarial Seal]

My Commission Expires

COMMONWEALTH OF PENNSYLVANIA,)
) ss.:
COUNTY OF ERIE,)

On this day of 1975, before me personally appeared , to me personally known, who, being by me duly sworn, says that he is Manager-Marketing, Locomotive Products Department, of GENERAL ELECTRIC COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

_____
Notary Public

[Notarial Seal]

My Commission Expires

STATE OF WASHINGTON,)
) ss.:
COUNTY OF KING,)

On this day of 1975, before me personally appeared , to me personally known, who, being by me duly sworn, says that he is a Vice President of PACCAR INC, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

_____
Notary Public

[Notarial Seal]

My Commission Expires

STATE OF NEW YORK,)
) ss.:
COUNTY OF NEW YORK,)

On this day of 1975, before me personally appeared , to me personally known, who, being by me duly sworn, says that he is a Vice President of ACF INDUSTRIES, INCORPORATED, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

_____
Notary Public

[Notarial Seal]

My Commission Expires

STATE OF ILLINOIS,)
) ss.:
COUNTY OF COOK,)

On this 31st day of January 1975, before me personally appeared R. W. HARPER, to me personally known, who, being by me duly sworn, says that he is a Vice President of THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

E. M. Arguin
Notary Public

[Notarial Seal]

My Commission Expires
FEBRUARY 1, 1977

SCHEDULE A

Item 1: (a) General Motors Corporation (Electro-Motive Division), a Delaware corporation, La Grange, Illinois 60525.

(b) FMC Corporation, a Delaware corporation, 4700 Northwest Front Avenue, Portland, Oregon 97210.

(c) Pullman Incorporated (Pullman Standard division), a Delaware corporation, 200 South Michigan Avenue, Chicago, Illinois 60604.

(d) General Electric Company, a New York corporation, 2901 East Lake Road, Erie, Pennsylvania 16501.

(e) PACCAR Inc, a Delaware corporation, 1400 North 4th Street, Renton, Washington 98055.

(f) ACF Industries, Incorporated, a New Jersey corporation, 750 Third Avenue, New York, New York 10017.

Item 2: (a) (General Motors Corporation (Electro-Motive Division)): The Builder warrants that the Equipment will be built in accordance with the Specifications and the standards and requirements set forth in Article 2 of the Conditional Sale Agreement to which this Schedule is attached (hereinafter called the Agreement) and warrants that the Equipment will be free from defects in material (except as to specialties incorporated therein which were specified by the Railroad and not manufactured by the Builder) and workmanship under normal use and service; the Builder's obligations under this paragraph being limited to making good at its plant any part or parts of any unit of the Equipment which, within two years after the delivery of such unit to the Railroad or before such unit has been in scheduled service 250,000 miles (whichever event shall first occur), shall be returned to the Builder with transportation charges

prepaid and which the Builder's examination shall disclose to its satisfaction to have been thus defective.

This warranty of the Builder shall not apply (i) to any locomotive components which shall have been repaired or altered unless repaired or altered by the Builder or its authorized service representatives, if, in its judgment, such repairs or alterations affect the stability of a unit of the Equipment or (ii) to any unit of the Equipment which has been subject to misuse, negligence or accident.

This warranty is expressly in lieu of all other warranties expressed or implied, including any implied warranty of merchantability or fitness for a particular purpose, and of all other obligations or liabilities on the part of the Builder, except for its obligations under Articles 2, 3, 4 and 14 of the Agreement. The Builder neither assumes nor authorizes any person to assume for it any other liability in connection with the construction and delivery of the Equipment, except as aforesaid.

The Builder further agrees with the Railroad that neither the inspection as provided in Article 3 of the Agreement, nor any examination, nor the acceptance of any units of the Equipment as provided in Article 3 of the Agreement shall be deemed a waiver or a modification by the Railroad of any of its rights hereunder.

The Builder further agrees to hold harmless the Railroad from claims, costs and liability to the Builder's employees arising out of and in the course of their employment and while on the Railroad's premises or equipment except when traveling as revenue passengers on the Railroad's trains, and except that the Builder shall not be liable for the Railroad's sole negligence.

The Builder reserves the right to make change

in the design of, or add any improvements to, units of the Equipment at any time without incurring any obligation to make similar changes or additions in respect of units of Equipment previously delivered to the Railroad.

(b) (FMC Corporation): The Builder warrants that the Equipment will be built in accordance with the Specifications and the standards and conditions set forth in Article 2 of the Conditional Sale Agreement to which this Schedule is attached (hereinafter called the Agreement), and, except in cases of articles and materials specified by the Railroad and not manufactured by the Builder, warrants the Equipment to be free from defects in material and workmanship under normal use and service, the liability of the Builder under this warranty being limited, as the Railroad may elect: (i) to repair of the defect at the Builder's plant at Portland, Oregon; or (ii) to replacement of the defective part; or (iii) to the cost of repair or replacement according to the AAR Code of Rules Governing Condition of and Repairs to Freight and Passenger Cars with Interchange of Traffic.

The foregoing warranty of the Builder shall begin at the time of delivery of a unit of Equipment to the Railroad and terminate one year after such delivery. <u>This warranty is expressly in lieu of all other warranties expressed or implied on the part of the Builder</u>, except for the patent indemnification included in Article 14 of of the Agreement and except as hereinafter provided in this Schedule A, and the Builder neither assumes nor authorizes any person to assume for it any other warranty liability in connection with the construction and delivery of the Equipment.

The Builder further agrees that the Railroad shall have the right to repair the Equipment furnished by the Builder of its manufacture and that repair parts for such equipment may be made by, or for, the Railroad or purchased

in the open market, as the Railroad may determine; and it is agreed the Equipment may be repaired by other railroads no matter where the repair parts are obtained. This agreement includes the right on the part of the Railroad to purchase repair parts for such Equipment in anticipation of breakage, instead of waiting until the breakage actually occurs before ordering the repair parts.

The Builder's patent indemnification set forth in Article 14 of the Agreement does not apply to designs, systems, processes and formulae utilized by the Builder in or about the construction of the Equipment, or any unit thereof, as the result of specification by the Railroad, other than for patents or other rights controlled by the Builder; and the Railroad shall indemnify and save harmless the Builder and/or manufacturer and the Vendor for the use of any designs, systems, processes and formulae utilized by the Builder in or about the construction of the Equipment, or any unit thereof, as the result of specification by the Railroad, as against any patent infringement claims or damages as specified in said Article 14, other than for patents or other rights controlled by the Builder.

The Builder will hold harmless the Railroad from claims, costs and liability to Builder's employees arising out of and in the course of their employment and while on the Railroad's premises or equipment except when traveling as revenue passengers on the Railroad's trains.

(c) (Pullman Incorporated (Pullman-Standard division)): The Builder warrants that the Equipment will be built in accordance with the Specifications and the standards and requirements set forth in Article 2 of the Conditional Sale Agreement to which this Schedule is attached (hereinafter called the Agreement) and warrants the Equipment will be free from defects in material (except as to specialties incorporated therein specified by the Railroad

and not manufactured by the Builder) and workmanship and design under normal use and service, the Builder's obligation under this Item 2 being limited to making good at its plant any part or parts of any unit of Equipment which shall, within one year after the delivery of such unit of Equipment to the Railroad, be returned to the Builder with transportation charges prepaid and which examination by the Builder shall disclose to its satisfaction to have been thus defective.

The foregoing warranty is expressly in lieu of all other warranties, expressed or implied, including any implied merchantability or fitness for a particular purpose, and of all other obligations or liabilities on the part of the Builder, except for its obligations under Articles 2, 3, 4 and 14 of the Agreement, and the Builder neither assumes nor authorizes any person to assume for it any other liability in connection with the construction of the Equipment and delivery of the Equipment, except as aforesaid. It is further understood and agreed that in no event shall the Builder be liable for indirect or consequential damages of any kind.

The Builder further agrees with the Railroad that neither the inspection provided in Article 3 of the Agreement, nor any examination, nor the acceptance of any units of the Equipment as provided in said Article 3 shall be deemed a waiver or a modification by the Railroad of any of its rights under this Item 2.

(d) (General Electric Company): The Builder warrants that the Equipment will be built in accordance with the Specifications and the standards and requirements referred to in Article 2 of the Conditional Sale Agreement to which this Schedule is attached (hereinafter called the Agreement) and warrants the equipment will be free from defects in material (except as to specialties incorporated therein that are not of the Builder's own specification or design) and workmanship under normal use

and service; the Builder's obligations under this paragraph being limited to making good at its plant any part or parts of any unit of the Equipment which, within one year after the delivery of such unit to the Railroad, shall be returned to the Builder with transportation charges prepaid and which the Builder's examination shall disclose to its satisfaction to have been thus defective.

This warranty of the Builder shall not apply (i) to any locomotive components which shall have been repaired or altered, unless repaired or altered by the Builder or its authorized service representatives, if, in its judgment, such repairs or alterations affect the stability of a unit of the Equipment or (ii) to any unit of the Equipment which has been subject to misuse, negligence or accident.

THIS WARRANTY IS EXPRESSLY IN LIEU OF ALL OTHER WARRANTIES EXPRESSED OR IMPLIED, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND OF ALL OTHER OBLIGATIONS OR LIABILITIES ON THE PART OF THE BUILDER, EXCEPT FOR ITS OBLIGATIONS UNDER THE AGREEMENT. THE BUILDER NEITHER ASSUMES NOR AUTHORIZES ANY PERSON TO ASSUME FOR IT ANY OTHER LIABILITY IN CONNECTION WITH THE CONSTRUCTION AND DELIVERY OF THE EQUIPMENT, EXCEPT AS AFORESAID.

In no event shall the Builder be liable for special or consequential damages. The Builder's liability on any claim of any kind including negligence, or for any loss or damage arising out of, connected with, or resulting from, the Agreement, or from the performance or breach thereof, or from the manufacture, sale, delivery, resale, repair or use of any unit of the Equipment covered by, or furnished under, the Agreement, shall in no case exceed the Purchase Price of such unit of the Equipment involved in the claim, and upon the expiration of the warranty period specified above all such liability shall terminate. The Builder shall have no liability

for any unit of the Equipment or part thereof which becomes defective by reason of improper storage or application, misuse, negligence, accident or improper operation, maintenance, repairs or alterations on the part of the Railroad or any third party other than the Builder. The foregoing warranty shall constitute the sole remedy of the Railroad and the sole liability of the Builder.

It is understood that the Builder has the right to make changes in the design of, or to add improvements to units of the Equipment at any time without incurring any obligations to install, at the Builder's expense, the same or other locomotives sold by Builder.

The Builder further agrees with the Railroad that neither the inspection as provided in the Agreement, nor any examination, nor the acceptance of any units of the Equipment as provided in the Agreement shall be deemed a waiver or a modification by the Railroad of any of its rights under this Item 2.

(e) (PACCAR Inc): The Builder warrants that the Equipment will be built in accordance with the requirements, specifications and standards set forth in Article 2 of the Conditional Sale Agreement to which this Schedule is attached (hereinafter called the Agreement) and, except in cases of articles and materials specified by the Railroad and not manufactured by the Builder, warrants the Equipment to be free from defects in material and workmanship under normal use and service, the liability of the Builder under this warranty being limited, as the Railroad may elect: (i) to repair of the defects at the Builder's plant; or (ii) to replacement of a defective part; or (iii) to the cost of repair or replacement according to the AAR Code of Rules Governinig Condition of and Repairs to Freight and Passenger Cars with Interchange of Traffic. The Builder shall be given reasonable opportunity to verify any claim of defects in workmanship or materials.

The foregoing warranty of the Builder shall begin at the time of delivery of a unit of the Equipment to the Railroad and terminate two years after such delivery. THE BUILDER MAKES NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. The Railroad's right under the foregoing warranty shall be its sole and exclusive remedy and the Builder will have no liability for lost profit or for indirect, incidental, consequential or commercial losses. This warranty is expressly in lieu of all other warranties express or implied on the part of the Builder, except for the patent indemnification included in Article 14 of this Agreement. The Builder neither assumes nor authorizes any person to assume for it any other warranty liability in connection with the construction and delivery of the Equipment.

The Builder further agrees with the Railroad that neither the inspection as provided in Article 3 of the Agreement nor any examination nor the acceptance of any units of the Equipment as provided in said Article 3 shall be deemed a waiver or a modification by the Railroad of any of its rights under this Item 2.

The Builder will hold harmless the Railroad from claims, costs and liability to the Builder's employees arising out of and in the course of their employment and while on the Railroad's premises or equipment except when traveling as revenue passengers on the Railroad's trains.

(f) (ACF Industries, Incorporated): The Builder warrants that the Equipment will be built in accordance with the requirements, specifications and standards set forth in Article 2 of the Conditional Sale Agreement to which this Schedule is attached (hereinafter called this Agreement) and warrants the Equipment will be free from defects in material (except as to specialties incorporated therein which were specified or supplied by the Railroad and not manufactured by the Builder) and

workmanship under normal use and service, the Builder's obligation under this Item 2 being limited to making good at its factory any part or parts of any unit of the Equipment which shall be returned to the Builder with transportation charges prepaid, within one year after the delivery of such unit to the Railroad, and which the Builder's examination shall disclose to its satisfaction to have been thus defective. The foregoing warranty of the Builder is expressly in lieu of all other warranties, express or implied, including any implied warranty of merchantability or fitness for a particular purpose, and of all other obligations or liabilities under Articles 2, 3, 4 and 14 of the Agreement, and the Builder neither assumes nor authorizes any person to assume for it any other liability in connection with the construction and delivery of the Equipment except as aforesaid.

The Builder further agrees that neither the inspection as provided in Article 3 of this Agreement nor any examination nor the acceptance of any units of the Equipment as provided in said Article 3 shall be deemed a waiver or a modification by the Owner-Trustee of any of its rights under this Item 2.

SCHEDULE B

Builder	Type	Quantity	Builder's Specifications	Builder's Plant	Railroad's Numbers (inclusive)	Unit Base Price	Total Base Price	Time and Place of Delivery
(a) General Motors Corporation (Electro-Motive Divison)	2300 h.p. GP-39-2 locomotive	29	8075	McCook, Illinois	362~~6~~7-365~~4~~5	$355,200	$10,300,800	Prior to April 30, 1975, at Builder's Plant
(b) FMC Corporation	60' 9" 100-ton box car with roller bearings AAR Mechanical Designation XM	400	Job 17620	Portland, Oregon	611000-611399	36,000	14,400,000	March-April, 1975, at Builder's Plant
(c) Pullman Incorporated (Pullman-Standard division)	60' 9" 100-ton box car with roller bearings; AAR Mechanical Designation XL	216	Lot Number 9783	Bessemer, Alabama	611400-611615	33,100	7,149,600	April-May, 1975, at Bessemer, Ala.

SCHEDULE B (Cont'd)

Builder	Type	Quantity	Builder's Specifications	Builder's Plant	Railroad's Numbers (inclusive)	Unit Base Price	Total Base Price	Time and Place of Delivery
(d) General Electric Company	U-36-C, 3600 h.p. locomotive; AAR Mechanical Designation C-C	6	3690E	Erie, Pennsylvania	8794-8799	$436,300	$ 2,617,800	Prior to March 1, 1975, at Erie, Pa.
(e) PACCAR Inc	52' 6", 70-ton insulated box car with roller bearing trucks, cushioned underframe, dual Air'Pak load dividers, 16' doors;	100	PC-339, as revised	Renton, Washington	522800-522899	37,100	3,710,000	Prior to March 1, 1975, at Builder's Plant
(f) ACF Industries, Incorporated	4600 cu. ft., 100-ton covered hopper car with roller bearing trucks and interior coating	400	11-01312, dated November 11, 1974	Huntington, West Virginia	314800-315199	30,000	12,000,000	February-March, 1975, at Russell, Ky.

7822

RECORDATION NO. _____ Filed & Recorded

FEB 6 1975 -10 55 AM

INTERSTATE COMMERCE COMMISSION

CONDITIONAL SALE AGREEMENT

Dated as of January 15, 1975

Among

GENERAL MOTORS CORPORATION
(Electro-Motive Division),
FMC CORPORATION,
PULLMAN INCORPORATED (Pullman Standard division)
GENERAL ELECTRIC COMPANY,
PACCAR INC,
ACF INDUSTRIES, INCORPORATED

and

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY

CONDITIONAL SALE AGREEMENT dated as of January 15, 1975, among each of the corporations named in Item 1 of Schedule A hereto and THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, a Delaware corporation (hereinafter called the Railroad).

WHEREAS each of the corporations named in Item 1 of Schedule A hereto severally have agreed to construct, sell and deliver to the Railroad, and the Railroad has agreed to purchase, the equipment described in Schedule B hereto (hereinafter called the Equipment);

NOW, THEREFORE, in consideration of the mutual promises, covenants and agreements hereinafter set forth, the parties hereto do hereby agree as follows:

ARTICLE 1. Certain Definitions; Obligations of Builders Several; Additional Agreements. The term "Vendor", whenever used in this Agreement, means, before any assignment of any of their rights hereunder, the respective corporations named in Item 1 of Schedule A hereto and any successor or successors for the time being to their respective manufacturing properties and businesses, and, after any such assignment, both any assignee or assignees for the time being of such particular assigned rights as regards such rights, and also any assignor as regards any rights hereunder that are retained or excluded from any assignment. Whenever the term "Vendor" refers to a corporation named in Item 1 of Schedule A hereto, such term shall mean any or all such corporations, as the context may require. The term "Builder", whenever used in this Agreement, means, both before and after any such assignment, each of the respective corporations (as to the units of Equipment to be constructed by such corporation and sold hereunder) named in Item 1 of Schedule A hereto and any successor or successors for the time being to their respective manufacturing properties and businesses.

The rights and obligations of the Builders under this Agreement are several in accordance with their interests and not joint. Accordingly, whenever this Agreement, by the use of such designation as "the Vendor", "such Builder" or other similar term, confers a right or imposes an obligation upon any corporation named in Item 1 of Schedule A hereto or its successor, such right or obligation shall be

construed to accrue to or to be enforceable against only the specific corporation furnishing the units of Equipment giving rise to such right or obligation and its successors as herein provided.

Additional Agreements, if any, set forth in Schedule A hereto shall be deemed to be a part of this Agreement as fully as though set forth in full in this instrument.

ARTICLE 2. Construction and Sale. Pursuant to this Agreement, each Builder shall construct the units of the Equipment to be constructed by it as described in Schedule B hereto (such Equipment with respect to each Builder being hereinafter sometimes called its Equipment) and will sell and deliver to the Railroad, and the Railroad will purchase from such Builder and accept delivery of and pay for (as hereinafter provided), such Equipment, each unit of which shall be constructed in accordance with the specifications set forth therefor in Schedule B hereto and in accordance with such modifications thereof as may be agreed upon in writing between such Builder and the Railroad (which specifications and modifications, if any, are hereinafter called the Specifications). The design, quality and component parts of each unit of the Equipment shall conform, on the date of completion of manufacture of each thereof, to all Department of Transportation and Interstate Commerce Commission requirements and specifications and to all standards recommended by the Association of American Railroads reasonably interpreted as being applicable to equipment of the character of such units of the Equipment and each unit of the Equipment (except to the extent, if any, referred to in Schedule A hereto and/or in Article 8 hereof) will be new railroad equipment.

ARTICLE 3. Inspection and Delivery. Each Builder will deliver the units of its Equipment to the Railroad at the place or places specified in Schedule B hereto (or if Schedule B does not specify a place or places, at the place or places designated from time to time by the Railroad), freight charges, if any, prepaid, in accordance with the delivery schedule set forth in Schedule B hereto; provided, however, that no Builder shall have any obligation to deliver any unit of its Equipment hereunder at any time after the commencement of any proceedings specified in clause (c) or (d) of Article 16 hereof or if any event of default (as described in Article 16 hereof), or event which with lapse of time and/or demand would constitute such an event of default, shall have occurred.

Each Builder's obligation as to time of delivery is subject, however, to delays resulting from causes beyond the Builder's reasonable control, including but not limited to acts of God, acts of government such as embargoes, priorities and allocations, war or war conditions, riot or civil commotion, sabotage, strikes, differences with workmen, accidents, fire, flood, explosion, damage to plant, equipment or facilities, delays in receiving necessary materials or delays of carriers or subcontractors.

Notwithstanding the preceding provisions of this Article 3, any Equipment not delivered, accepted and settled for pursuant to Article 4 hereof on or before August 31, 1975, shall be excluded herefrom. If any unit or units of Equipment shall be excluded from this Agreement pursuant to the immediately preceding sentence, the Builder or Builders of such unit or units and the Railroad shall execute an agreement supplemental hereto limiting this Agreement to the units of Equipment not so excluded herefrom. If a Builder's failure to deliver Equipment so excluded from this Agreement resulted from one or more of the causes set forth in the immediately preceding paragraph, the Railroad shall nevertheless be obligated to accept such Equipment and pay the full purchase price therefor, determined as provided in this Agreement, if and when such Equipment shall be completed and delivered by such Builder, such payment to be in cash on the delivery of such Equipment, either directly or, in case the Railroad shall arrange therefor, by means of a conditional sale agreement, equipment trust or such other appropriate method of financing as the Railroad shall determine and as shall be reasonably acceptable to such Builder.

During construction, the Equipment shall be subject to inspection and approval by the authorized inspectors of the Railroad and each Builder shall grant to such authorized inspectors reasonable access to its plant. Each Builder agrees to inspect all materials used in the construction of the Equipment in accordance with the standard quality control practices of such Builder. Upon completion of each unit or of a number of units of the Equipment, such unit or units shall be presented to an inspector of the Railroad for inspection at the place specified for delivery of such unit or units, and if each such unit conforms to the Specifications, requirements and standards applicable thereto, such inspector or an authorized representative of the Railroad shall execute and deliver to such Builder a certificate of acceptance (hereinafter called the Certificate of Accep-

tance) stating that such unit or units have been inspected and accepted on behalf of the Railroad and are marked in accordance with Article 7 hereof; provided, however, that such Builder shall not thereby be relieved of its warranty referred to in Article 14 hereof.

On delivery of each such unit hereunder at the place specified for delivery, the Railroad will assume the responsibility and risk of, and shall not be released from its obligations hereunder in the event of, any damage to or the destruction or loss of such unit; provided, however, that such delivery shall not thereby relieve a Builder of its warranty referred to in Article 14 hereof.

ARTICLE 4. Purchase Price and Payment. The base price or prices per unit of the Equipment are set forth in Schedule B hereto. Such base price or prices are subject to such increase or decrease as may be agreed to by the Builder thereof and the Railroad. The term "Purchase Price" as used herein shall mean the base price or prices as so increased or decreased. If the aggregate Purchase Price of Equipment for which settlement has been made under this Agreement is in an amount not less than $50,250,000, the Railroad may, at its option, exclude from this Agreement any unit or units of Equipment for which settlement has not been made and the appropriate Builder or Builders of such unit or units (and any assignee of such Builder or Builders) shall, upon request of the Railroad enter into an agreement supplemental hereto evidencing such exclusion. The Railroad agrees to purchase any such unit or units so excluded from this Agreement and to pay the Builder in cash on the date such unit or units would otherwise have been settled for under this Agreement either directly, or, if the Builder and the Railroad shall mutually agree, by means of a conditional sale, equipment trust or other appropriate method of financing.

For the purpose of making settlement, the Equipment shall be divided into such number of groups (not more than three) of units of the Equipment, delivered to and accepted by the Railroad (each such group being hereinafter called a Group), as the respective Builder, the Railroad and the Vendor may agree to.

The Railroad hereby acknowledges itself to be indebted to the Vendor in the amount of, and hereby promises to pay in cash to the Vendor at such place as the Vendor

may designate, the Purchase Price of the Equipment, as follows:

(a) on each Closing Date (as hereinafter defined) the amount, if any, by which (x) the aggregate Purchase Price of all units of the Equipment for which settlement has theretofore and is then being made, as stated in the invoice or invoices presented in respect of such Closing Date (said invoiced prices being hereinafter called the Invoiced Purchase Prices), exceeds (y) the sum of $50,000,000 and any amount or amounts previously paid or payable with respect to the Invoiced Purchase Prices pursuant to this subparagraph (a); and

(b) in 15 consecutive equal (to the nearest multiple of $1,000, except for appropriate adjustment of the final instalment in case the amount payable pursuant to this subparagraph (b) shall not, when divided by 15, result in an amount ending in a multiple of $1,000) annual instalments, as hereinafter provided, an amount equal to the aggregate of the Invoiced Purchase Prices for all the Equipment less the amount paid or payable with respect thereto pursuant to subparagraph (a) of this paragraph (the aggregate of said instalments being hereinafter called the Conditional Sale Indebtedness).

In the event that on any Closing Date the final Purchase Price of any Group has not been finally determined, the invoice presented may be a preliminary invoice, subject to upward adjustment upon determination of the final Purchase Price, and a supplemental invoice may be presented by the Builder at least ten days prior to any subsequent Closing Date for settlement on such subsequent Closing Date for any increase in the Purchase Price; it being understood and agreed by the Builders that any preliminary invoice or invoices presented by the Builders in respect of any Group shall be in amount not in excess of the final Purchase Price of such Group.

The instalments of the Conditional Sale Indebtedness payable pursuant to subparagraph (b) of the third paragraph of this Article 4 shall be payable annually on May 15 in each year commencing on May 15, 1976, to and including May 15, 1990. The unpaid portion of the Conditional Sale Indebtedness shall bear interest from the respective Closing Dates on which such indebtedness was incurred at the rate of 9-3/4% per annum. Such interest shall be payable, to the extent accrued, on May 15 and November 15 in each year, commencing May 15, 1975.

The term "Closing Date" with respect to any Group of the Equipment shall mean March 3, 1975, and such other dates (after March 3, 1975, and prior to August 31, 1975,) not more than 10 business days following presentation by a Builder to the Railroad of the invoice and the Certificate or Certificates of Acceptance for such Group, as shall be fixed by the Railroad by written notice delivered to the Vendor at least six business days prior to the Closing Date designated therein; it being understood and agreed, however, that the aggregate Purchase Price of all Equipment settled for on Closing Dates prior to April 1, 1975, shall not exceed $26,000,000. The term "business days" as used herein means calendar days, excluding Saturdays, Sundays and any other day on which banking institutions in Chicago, Illinois, or New York, New York, are authorized to remain closed.

All interest under this Agreement shall be calculated on the basis of a 360-day year of twelve 30-day months.

The Railroad will pay, to the extent legally enforceable, interest at the rate of 10-3/4% per annum upon all amounts remaining unpaid after the same shall have become due and payable pursuant to the terms hereof, anything herein to the contrary notwithstanding.

All payments provided for in this Agreement shall be made in such coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts. Except as provided in Article 8 hereof, the Railroad shall not have the privilege of prepaying any instalment of its indebtedness hereunder prior to the date it becomes due.

In the event the Vendor, pursuant to Article 15 hereof, assigns the right to receive the payments herein provided to be made by the Railroad, the assignee thereof may request the Railroad to make and the Railroad shall make such payments to it at such address as shall be supplied to the Railroad by the assignee.

ARTICLE 5. Taxes. All payments to be made by the Railroad hereunder will be free of expense to the Vendor for collection or other charges and will be free of expense to the Vendor with respect to the amount of any local, state, federal or foreign taxes (other than net income, gross receipts [except gross receipts taxes in the nature of or in lieu of sales or use taxes], excess profits and similar taxes) or license fees, assessments, charges, fines or penal-

ties hereafter levied or imposed upon or in connection with or measured by, this Agreement or any sale, use, payment, shipment, delivery or transfer of title under the terms hereof (all such expenses, taxes, license fees, assessments, charges, fines and penalties being hereinafter called impositions), all of which impositions the Railroad assumes and agrees to pay on demand. The Railroad will also pay promptly all impositions which may be imposed upon the Equipment delivered to it or for the use or operation thereof or upon the earnings arising therefrom or upon the Vendor solely by reason of its ownership thereof and will keep at all times all and every part of the Equipment free and clear of all impositions which might in any way affect the title of the Vendor or result in a lien upon any part of the Equipment; provided, however, that the Railroad shall be under no obligation to pay any impositions of any kind so long as it is contesting in good faith and by appropriate legal proceedings such impositions and the nonpayment thereof does not, in the opinion of the Vendor, adversely affect the property or rights of the Vendor in or to the Equipment or otherwise under this Agreement. If any such impositions shall have been charged or levied against the Vendor directly and paid by the Vendor, the Railroad shall reimburse the Vendor upon presentation of an invoice therefor, and any amounts so paid by the Vendor shall be secured by and under this Agreement; provided, however, that the Railroad shall not be obligated to reimburse the Vendor for any impositions so paid unless the Vendor shall have been legally liable with respect thereto (as evidenced by an opinion of counsel for the Vendor) or unless the Railroad shall have approved the payment thereof.

ARTICLE 6. Title to the Equipment. The Vendor shall and hereby does retain the full legal title to and property in the Equipment until the Railroad shall have made all its payments under this Agreement and shall have kept and performed all its agreements herein contained, notwithstanding the delivery of the Equipment to and the possession and use thereof by the Railroad as provided in this Agreement. Any and all additions to the Equipment and any and all replacements of the Equipment and of parts thereof and additions thereto shall constitute accessions to the Equipment and shall be subject to all the terms and conditions of this Agreement and included in the term "Equipment" as used in this Agreement.

Except as otherwise specifically provided in Article 8 hereof, when and only when the full indebtedness in

respect of the Purchase Price of the Equipment, together with interest and all other payments as herein provided, shall have been paid, and all the Railroad's obligations herein contained shall have been performed by the Railroad, absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Railroad without further transfer or action on the part of the Vendor. However, the Vendor, if so requested by the Railroad at that time, will (a) execute a bill or bills of sale for the Equipment transferring its title thereto and property therein to the Railroad, or upon its order, free of all liens, security interests and other encumbrances created or retained hereby and deliver such bill or bills of sale to the Railroad at its address referred to in Article 21 hereof, (b) execute and deliver at the same place, for filing, recording or depositing in all necessary public offices, such instrument or instruments in writing as may be necessary or appropriate in order then to make clear upon the public records the title of the Railroad to the to the Equipment and (c) pay to the Railroad any money paid to the Vendor pursuant to Article 8 hereof and not theretofore applied as therein provided. The Railroad hereby waives and releases any and all rights, existing or that may be acquired, in or to the payment of any penalty, forfeit or damages for failure to execute and deliver such bill or bills of sale or instrument or instruments or to file any certificate of payment in compliance with any law or statute requiring the filing of the same, except for failure to execute and deliver such bill or bills of sale or instrument or instruments or to file such certificate within a reasonable time after written demand by the Railroad.

ARTICLE 7. Marking of the Equipment. The Railroad will cause each unit of the Equipment to be kept numbered with its identifying number as set forth in Schedule B hereto, or in the case of Equipment not there listed such identifying number as shall be set forth in any amendment or supplement hereto extending this Agreement to cover such Equipment, and will keep and maintain, plainly, distinctly, permanently and conspicuously marked on each side of each unit, in letters not less than one inch in height, the words "Ownership subject to a Security Interest Filed under the Interstate Commerce Act, Section 20c" or other appropriate markings approved by the Vendor, with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the Vendor's title to and property in the Equipment and its rights under this Agreement. The

Railroad will not place any such unit in operation or exercise any control or dominion over the same until such markings have been made thereon and will replace promptly any such markings which may be removed, defaced or destroyed. The Railroad will not change the number of any unit of the Equipment except in accordance with a statement of new number or numbers to be substituted therefor, which statement previously shall have been filed with the Vendor by the Railroad and filed, recorded and deposited by the Railroad in all public offices where this Agreement shall have been filed, recorded and deposited.

Except as provided in the immediately preceding paragraph, the Railroad will not allow the name of any person, association or corporation to be placed on any unit of the Equipment as a designation that might be interpreted as a claim of ownership; provided, however, that the Railroad may cause the Equipment to be lettered with the names or initials or other insignia of the Railroad or its affiliates.

ARTICLE 8. Casualty Occurrences. In the event that any unit of the Equipment shall be worn out, lost, stolen, destroyed, irreparably damaged or otherwise rendered permanently unfit for use from any cause whatsoever, or taken or requisitioned by condemnation or otherwise (such occurrences being hereinafter called Casualty Occurrences), the Railroad shall promptly (after it has knowledge of such Casualty Occurrence) and fully inform the Vendor in regard thereto. When the aggregate Casualty Value (as defined herein) of all units having suffered a Casualty Occurrence (exclusive of units having suffered a Casualty Occurrence with respect to which a payment shall have been made to the Vendor pursuant to this Article 8) hereunder shall exceed $250,000 (or such lesser amount as the Railroad may elect), the Railroad, within 90 days after the Railroad has knowledge of such event, shall file with the Vendor a certificate of an officer of the Railroad setting forth the Casualty Value of each unit of the Equipment having suffered a Casualty Occurrence and shall pay to the Vendor a sum equal to the aggregate Casualty Value as of the date of such payment of such unit or units of the Equipment having suffered a Casualty Occurrence, together with interest on such sum so being prepaid accrued to the date of such prepayment, but without premium, (the Railroad hereby agreeing to make such payment of accrued interest to the Vendor at the time it makes payment of such Casualty Value to the Vendor); provided, however, if and so long as no event of default

shall have occurred and be continuing hereunder, in lieu of making all or any portion of such payment to the Vendor, the Railroad may, on or before the expiration of such 90-day period, cause to be transferred to the Vendor a replacement unit or units of standard gauge railroad equipment (other than passenger or work equipment of types other than locomotives) and receive credit against the Casualty Value payment it would otherwise have been required to make in an amount equal to the value threof. The value of any unit or units of replacement equipment shall be equal to the cost thereof, if new, as specified in the invoice therefor delivered to the Vendor or, if not new, the lesser of (y) the fair market value thereof or (z) the original cost thereof less depreciation at a rate equal to 1/15th of such cost for each year in service, all as set forth in a certificate of an officer of the Railroad delivered to the Vendor at the time of such replacement. Any unit of replacement equipment shall have a remaining useful life (as evidenced by a certificate of an operating officer at the Railroad) at least as long as that which the Equipment being replaced would have had but for the Casualty Occurrence. In case any money is applied to prepay indebtedness, it shall be so applied, together with the interest due thereon, on the business day next following receipt by the Vendor of the appropriate payment, to reduce instalments of the aggregate Conditional Sale Indebtedness thereafter falling due in the inverse order of maturity thereof without premium.

The Casualty Value of each unit of the Equipment (other than a replacement unit) shall be deemed to be that amount which bears the same ratio to the original Purchase Price thereof (less, in the event that the Railroad shall have made any payment or payments under the provisions of subparagraph (a) of the third paragraph of Article 4 hereof, an amount which bears the same ratio to the aggregate of all such payments as the original Purchase Price of such unit bears to the original aggregate Purchase Price of all the Equipment) as the unpaid Conditional Sale Indebtedness (without giving effect to any prepayments then or theretofore made pursuant to this Article 8) as of the date payment is made with respect to such Casualty Occurrence bears to the original Conditional Sale Indebtedness. The Casualty Value of each replacement unit shall be deemed to be that amount which bears the same ratio to the portion of the cost thereof paid by the Vendor as the unpaid Conditional Sale Indebtedness ness (without giving effect to any prepayments then or theretofore made pursuant to this Article 8) as of the date payment

is made with respect to such Casualty Occurrence bears to the unpaid Conditional Sale Indebtedness (without giving effect to any such prepayments) as of the date of acquisition by the Vendor of such replacement unit.

The Railroad will cause any replacement unit or units to be marked as provided in Article 7 hereof. Any and all such replacements of Equipment shall constitute accessions to the Equipment and shall be subject to all appropriate terms and conditions of this Agreement as though part of the original Equipment delivered hereunder and shall be included in the term "Equipment" as used in this Agreement. Title to all such replacement units shall be free and clear of all liens and encumbrances except the liens permitted by the second paragraph of Article 12 hereof and shall be taken initially and shall remain in the name of the Vendor subject to the provisions hereof, and the Railroad shall execute, acknowledge, deliver, file, record or deposit all such documents and do any and all such acts as may be necessary to cause such replacement units to come under and be subject to this Agreement. All such replacement units shall be guaranteed and warranted in like manner as is customary at the time for similar equipment. Whenever the Railroad shall cause to be transferred to the Vendor a unit or units of replacement Equipment, the Railroad shall deliver to the Vendor an executed counterpart of an opinion of counsel covering the matters set forth in this paragraph.

In order to facilitate the sale or other disposition of any Equipment suffering a Casualty Occurrence, in respect of which the Railroad shall have paid to the Vendor the Casualty Value and/or shall have caused to be transferred to the Vendor a unit or units of replacement Equipment, the Vendor shall, upon request of the Railroad, execute and deliver to the Railroad or the Railroad's vendee, assignee or nominee, a bill of sale (without warranties) for such Equipment, and such other documents as may be required to release such Equipment from the terms and scope of this Agreement, in such form as may be reasonably requested by the Railroad.

The Railroad will at all times prior to the payment in full of the Conditional Sale Indebtedness together with interest thereon and all other payments required hereby, at its own expense, cause to be carried and maintained insurance in respect of the Equipment consisting of locomotives at the time subject hereto, and public liability insurance,

in amounts and against risks customarily insured against by railroad companies on similar equipment, and in any event in amounts and against risks comparable to those insured against by the Railroad on equipment owned by it; provided, however, that the Railroad may act as self-insurer in respect of losses and damage not exceeding $3,000,000 in respect of any single occurrence.

ARTICLE 9. Maintenance; Compliance with Laws and Rules. The Railroad will at all times maintain the Equipment or cause the Equipment to be maintained in good order and repair at its own expense.

During the term of this Agreement, the Railroad will at all times comply in all respects with all laws of the jurisdictions in which its operations involving the Equipment may extend, with the interchange rules of the Asociation of American Railroads and with all lawful rules of the Department of Transportation, Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Equipment, to the extent that such laws and rules affect the title, operation or use of the Equipment, and in the event that such laws or rules require any alteration, replacement or addition of any part on any unit of the Equipment, the Railroad will conform therewith, at its own expense; provided, however, that the Railroad may, in good faith, contest the validity or application of any such law or rule in any reasonable manner which does not, in the opinion of the Vendor, adversely affect the property or rights of the Vendor under this Agreement.

ARTICLE 10. Reports and Inspections. On or before March 31 in each year, commencing with the calendar year 1976, the Railroad shall furnish to the Vendor an accurate statement signed by an officer of the Railroad (a) setting forth as at the preceding December 31 the amount, description and numbers of all units of the Equipment that have suffered a Casualty Occurrence during the preceding calendar year (or since the date of this Agreement in the case of the first such statement) or that have been withdrawn from use pending repairs (other than running repairs) and such other information regarding the condition and state of repair of the Equipment as the Vendor may reasonably request and (b) stating that, in the case of all Equipment repaired or repainted during the period covered by such statement, the numbers and markings required by Article 7 hereof have

been preserved or replaced. During the term of this Agreement, the Vendor shall have the right, by its agents, to inspect the Equipment and the Railroad's records with respect thereto at such times and locations as the Vendor may reasonably request.

The Railroad shall furnish (i) as soon as available and in any event within 60 days after the end of each quarterly period, except the last, of each fiscal year, a balance sheet of the Railroad (as filed with the Interstate Commerce Commission (hereinafter called the ICC)) as at the end of such period, and an income statement of the Railroad as filed with the ICC for the period beginning on the first day of such fiscal year and ending on the date of such balance sheet, setting forth comparative figures for the corresponding period of the preceding fiscal year, all in reasonable detail and certified by the principal accounting officer of the Railroad, and (ii) as soon as available and in any event within 120 days after the end of each fiscal year, a copy of the Railroad's annual report as filed with the ICC, which shall include the balance sheet, income statement and statement of retained income of the Railroad certified by the principal accounting officer of the Railroad and which shall be accompanied by a letter from the independent accountants for Santa Fe Industries, Inc., the parent of the Railroad, stating that such financial statements, restated to generally accepted accounting principles, were included in the certified consolidated financial statement of Santa Fe Industries, Inc., and that such certified financial statements are not qualified with respect to the Railroad and, in the event a restatement to generally accepted accounting principles is required, such letter shall be accompanied by a schedule which shall describe such restatement in reasonable detail.

ARTICLE 11. Possession and Use. The Railroad, so long as an event of default shall not have occurred under this Agreement and be continuing, shall be entitled to the possession of the Equipment and the use thereof upon the lines of railroad owned or operated by it either alone or jointly with others and whether under lease or otherwise, or upon the lines of railroad owned or operated by any railroad company controlled by, or under common control with, the Railroad, or over which it has trackage rights, or upon connecting and other carriers in the usual interchange of traffic, from and after delivery of the Equipment by the Builder to the Railroad, but only upon and subject to all the terms and conditions of this Agreement.

ARTICLE 12. Prohibition Against Liens. The Railroad will pay or discharge any and all sums claimed by any party from, through or under the Railroad or its successors or assigns which, if unpaid, might become a lien, charge or security interest on the Equipment, or any unit thereof, equal or superior to the Vendor's title thereto or property therein; provided, however, that the Railroad shall be under no obligation to pay or discharge any such claim so long as it is contesting in good faith and by appropriate legal proceedings such claim and the nonpayment thereof does not, in the opinion of the Vendor, adversely affect the property or rights of the Vendor in or to the Equipment or otherwise under this Agreement. Any amounts paid by the Vendor in discharge of liens, charges or security interests upon the Equipment shall be secured by and under this Agreement.

This covenant will not be deemed breached by reason of liens for taxes, assessments or governmental charges or levies, in each case not due and delinquent, or undetermined or inchoate materialmen's, mechanics', workmen's, repairmen's or other like liens arising in the ordinary course of business and, in each case, not delinquent.

ARTICLE 13. Railroad's Indemnities. The Railroad agrees to indemnify, protect and hold harmless the Vendor from and against all losses, damages, injuries, liabilities, claims and demands whatsoever, regardless of the cause thereof, and expenses in connection therewith, including counsel fees, arising out of retention by the Vendor of title to the Equipment, the use and operation thereof by the Railroad during the period when title thereto remains in the Vendor or the transfer of title to the Equipment by the Vendor pursuant to any of the provisions of this Agreement, except, however, any losses, damages, injuries, liabilities, claims and demands whatsoever arising out of any tort, breach of warranty or failure to perform any covenant hereunder by any Builder. This covenant of indemnity shall continue in full force and effect notwithstanding the full payment of all sums due under this Agreement, or the satisfaction, discharge or termination of this Agreement in any manner whatsoever.

ARTICLE 14. Patent Indemnities; Builder's Warranty of Material and Workmanship. Except in cases of articles or materials specified by the Railroad and not manufactured by a Builder and in cases of designs, systems, processes, formulae or combinations specified by the Railroad and not

developed or purported to be developed by any Builder, each Builder agrees to indemnify, protect and hold harmless the Railroad from and against any and all liability, claims, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Railroad, its assigns or the users of its respective Equipment because of the use in or about the construction or operation of any of the Equipment of any design, system, process, formula, combination, article or material which infringes or is claimed to infringe on any patent or other right. The Railroad likewise will indemnify, protect and hold harmless the Vendor from and against any and all liability, claims, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Vendor because of the use in or about the construction or operation of any of the Equipment of any article or material specified by the Railroad and not manufactured by a Builder or of any design, system, process, formula or combination specified by the Railroad and not developed or purported to be developed by a Builder which infringes or is claimed to infringe on any patent or other right. Each Builder agrees to and hereby does, to the extent legally possible without impairing any claim, right or cause of action hereinafter referred to, assign, set over and deliver to the Railroad every claim, right and cause of action which such Builder has or hereafter shall have against the seller or sellers of any designs, systems, processes, formulae, combinations, articles or materials specified by the Railroad and purchased or otherwise acquired by such Builder for use in or about the construction or operation of any of the Equipment on the ground that any such design, system, process, formula, combination, article or material or operation thereof infringes or is claimed to infringe on any patent or other right. Each Builder further agrees to execute and deliver to the Railroad or the users of the Equipment all and every such further assurance as may be reasonably requested by the Railroad more fully to effectuate the assignment and delivery of every such claim, right and cause of action. Each Builder will give notice to the Railroad of any claim known to such Builder from which liability may be charged against the Railroad hereunder and the Railroad will give notice to the appropriate Builder of any claim known to the Railroad from which liability may be charged against any Builder hereunder. Such covenants of indemnity shall continue in full force and effect notwithstanding the full payment of all sums due under this Agreement, or the satisfaction,

discharge or termination of this Agreement in any manner whatsoever.

Each Builder's warranty of material and workmanship is set forth in Schedule A hereto.

ARTICLE 15. Assignments. The Railroad will not sell, assign, transfer or otherwise dispose of its rights under this Agreement or, except as provided in Article 11 hereof, transfer the right to possession of any unit of the Equipment without first obtaining the written consent of the Vendor. A sale, assignment, transfer or disposition to a railroad company organized under the laws of the United States of America or any of the states thereof which shall acquire all or substantially all the lines of railroad of the Railroad, and which, by execution of an appropriate instrument satisfactory to the Vendor, shall assume and agree to perform each of, and all, the obligations and covenants of the Railroad under this Agreement, shall not be deemed a breach of this covenant.

All or any of the rights, benefits and advantages of the Vendor under this Agreement, including the right to receive the payments herein provided to be made by the Railroad, may be assigned by the Vendor and reassigned by any assignee at any time or from time to time. No such assignment shall subject any assignee to, or relieve any Builder from, any of the obligations of such Builder to construct and deliver the Equipment in accordance with this Agreement or to respond to its respective warranties and indemnities contained or referred to in Article 14 hereof, or relieve the Railroad of any of its obligations to such Builders under Articles 2, 3, 4, 5, 13 and 14 hereof, Schedule A hereto and this Article 15 or of any other obligation which, according to its terms or context, is intended to survive an assignment.

Upon any such assignment either the assignor or the assignee shall give written notice to the Railroad, together with a counterpart or copy of such assignment, stating the identity and post office address of the assignee, and such assignee shall by virtue of such assignment acquire all the assignor's right, title and interest in and to the Equipment and this Agreement, or in and to a portion thereof, as the case may be, subject only to such reservations as may be contained in such assignment. From and after the receipt by the Railroadd of the notification of any such

assignment, all payments thereafter to be made by the Railroad under this Agreement shall, to the extent so assigned, be made to the assignee in such manner as it may direct.

The Railroad recognizes that it is the custom of railroad equipment manufacturers to assign conditional sale agreements and understands that the assignment of this Agreement, or of some of or all the rights of the Vendor hereunder, is contemplated. The Railroad expressly represents, for the purpose of assurance to any person, firm or corporation considering the acquisition of this Agreement or of all or any of the rights of the Vendor hereunder and for the purposes of inducing such acquisition, that in the event of such assignment by the Vendor as hereinbefore provided, the rights of such assignee to the entire unpaid indebtedness in respect of the Purchase Price or such part thereof as may be assigned, together with interest thereon, as well as any other rights hereunder which may be so assigned, shall not be subject to any defense, setoff, counterclaim or recoupment whatsoever arising out of any breach of any obligation of a Builder with respect to the Equipment or the manufacture, construction, delivery or warranty thereof, or with respect to any indemnity herein contained, nor subject to any defense, setoff, counterclaim or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to the Railroad by a Builder. Any and all such obligations, howsoever arising, shall be and remain enforceable by the Railroad against and only against the respective Builders.

The Railroad will (a) in connection with each settlement for the Equipment subsequent to such assignment, deliver to the assignee, at least five business days prior to the Closing Date for the Group fixed in the notice by the Railroad, all documents required by the terms of such assignment to be delivered to such assignee in connection with such settlement, in such number of counterparts or copies as may reasonably be requested, except for any opinion of counsel for such assignee, and (b) furnish to such assignee such number of counterparts of any other certificate or paper required by the Vendor as may reasonably be requested.

If this Agreement shall have been assigned by the Builders and the assignee shall not make payment to a Builder with respect to units of its Equipment as provided in the instrument making such assignment, such Builder will promptly notify the Railroad of such event and, if such

amount shall not have been previously paid by such assignee, the Railroad will, not later than 90 days after the date such payment was due, pay or cause to be paid to such Builder the aggregate unpaid Purchase Price of such units of its Equipment, together with interest from the day such payment was due to the date of payment by the Railroad at the highest prime rate of interest charged by any of the four New York City banks having the largest total assets, in effect on the date such payment was due.

ARTICLE 16. Defaults. In the event that any one or more of the following events of default shall occur and be continuing, to wit:

(a) the Railroad shall fail to pay in full any indebtedness in respect of the Purchase Price of the Equipment or any other sum payable by the Railroad as provided in this Agreement within ten days after payment thereof shall be due hereunder; or

(b) the Railroad shall, for more than 30 days after the Vendor shall have demanded in writing performance thereof, fail or refuse to comply with any covenant, agreement, term or provision of this Agreement, or of any agreement entered into concurrently herewith relating to the financing of the Equipment on its part to be kept or performed or to make provision satisfactory to the Vendor for such compliance; or

(c) a petition for reorganization under Section 77 of the Bankruptcy Act, as now constituted or as said Section 77 may be hereafter amended, shall be filed by or against the Railroad and, unless such petition shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Railroad under this Agreement shall not have been (and shall not continue to have been) duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees appointed (whether or not subject to ratification) in such proceedings in such manner that such obligations shall have the same status as obligations incurred by such trustee or trustees, within 30 days after such appointment, if any, or 60 days after such petition shall have been filed, whichever shall be earlier; or

(d) any other proceedings shall be commenced by or against the Railroad for any relief under any bankruptcy or insolvency law, or law relating to the relief of debtors, readjustments of indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which does not permit any readjustment of the indebtedness payable hereunder), and, unless such proceedings shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Railroad under this Agreement shall not have been (and shall not continue to have been) duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed (whether or not subject to ratification) for the Railroad or for its property in connection with any such proceedings in such manner that such obligations shall have the same status as obligations incurred by such trustee or trustees or receiver or receivers, within 30 days after such appointment, if any, or 60 days after such proceedings shall have been commenced, whichever shall be earlier; or

(e) the Railroad shall make or suffer any unauthorized assignment or transfer of this Agreement or any interest herein or any unauthorized transfer of the right to possession of any unit of the Equipment;

then at any time after the occurrence of such an event of default the Vendor may, upon written notice to the Railroad and upon compliance with any mandatory legal requirements then in force and applicable to such action by the Vendor, declare (hereinafter called a Declaration of Default) the entire indebtedness in respect of the Purchase Price of the Equipment, together with the interest thereon then accrued and unpaid, immediately due and payable, without further demand, and thereafter the aggregate of the unpaid balance of such indebtedness and interest shall bear interest from the date of such Declaration of Default at the rate per annum specified in Article 4 hereof as being applicable to amounts remaining unpaid after becoming due and payable, to the extent legally enforceable. The Vendor shall thereupon be entitled to recover judgment for the entire unpaid balance of the indebtedness in respect of the Purchase Price of the Equipment so payable, with interest as aforesaid, and to collect such judgment out of any property of

the Railroad wherever situated. The Railroad shall promptly notify the Vendor of any event which has come to its attention which constitutes, or which with the giving of notice and/or lapse of time could constitute, an event of default under this Agreement.

The Vendor may at its election waive any such event of default and its consequences and rescind and annul any Declaration of Default by notice to the Railroad in writing to that effect, and thereupon the respective rights of the parties shall be as they would have been if no such event of default had occurred and no Declaration of Default had been made. Notwithstanding the provisions of this paragraph, it is expressly understood and agreed by the Railroad that time is of the essence of this Agreement and that no such waiver, rescission or annulment shall extend to or affect any other or subsequent default or impair any rights or remedies consequent thereon.

ARTICLE 17. Remedies. At any time during the continuance of a Declaration of Default, the Vendor may, subject to compliance with any mandatory legal requirements then in force and applicable to the action to be taken by the Vendor, take or cause to be taken by its agent or agents immediate possession of the Equipment, or one or more of the units thereof, without liability to return to the Railroad any sums theretofore paid and free from all claims whatsoever, except as hereinafter in this Article 17 expressly provided, and may remove the same from possession and use of the Railroad or any other person and for such purpose may enter upon the Railroad's premises or any other premises where the Equipment may be located and may use and employ in connection with such removal any supplies, services and aids and any available trackage and other facilities or means of the Railroad.

In case the Vendor shall demand possession of the Equipment pursuant to this Agreement and shall reasonably designate a point or points upon the premises of the Railroad for the delivery of the Equipment to the Vendor, the Railroad shall, at its own expense, forthwith and in the usual manner (including, but not by way of limitation, giving prompt telegraphic and written notice to the Association of American Railroads and all railroads to which any part of the Equipment has been interchanged to return the Equipment so interchanged), cause (a) the Equipment to be moved to such point or points on its lines as shall

be designated by the Vendor and shall there deliver the Equipment or cause it to be delivered to the Vendor and (b) the Equipment to be moved to such interchange point or points of the Railroad as shall be designated by the Vendor upon any sale, lease or other disposal of all or any part of the Equipment by the Vendor. At the option of the Vendor, the Vendor may keep the Equipment on any of the lines or premises of the Railroad until the Vendor shall have leased, sold or otherwise disposed of the same, and for such purpose the Railroad agrees to furnish, without charge for rent or storage, the necessary facilities at any point or points selected by the Vendor reasonably convenient to the Railroad and, at the Railroad's risk, to permit inspection of the Equipment by the Vendor, the Vendor's representatives and prospective purchasers and users. This agreement to deliver the Equipment and furnish facilities as hereinbefore provided is of the essence of the agreement between the parties, and, upon application to any court of equity having jurisdiction in the premises, the Vendor shall be entitled to a decree against the Railroad requiring specific performance hereof. The Railroad hereby expressly waives any and all claims against the Vendor and its agent or agents for damages of whatever nature in connection with any retaking of any unit of the Equipment in any reasonable manner.

At any time during the continuance of a Declaration of Default, the Vendor (after retaking possession of the Equipment as hereinbefore in this Article 17 provided) may at its election and upon such notice as is hereinafter set forth retain the Equipment in satisfaction of the entire indebtedness in respect of the Purchase Price of the Equipment and make such disposition thereof as the Vendor shall deem fit. Written notice of the Vendor's election to retain the Equipment shall be given to the Railroad by telegram or registered mail, addressed as provided in Article 21 hereof, and to any other persons to whom the law may require notice, within 30 days after such Declaration of Default. In the event that the Vendor should elect to retain the Equipment and no objection is made thereto within the 30-day period described in the second proviso below, all the Railroad's rights in the Equipment shall thereupon terminate and all payments made by the Railroad may be retained by the Vendor as compensation for the use of the Equipment by the Railroad; <u>provided, however</u>, that if the Railroad, before the expiration of the 30-day period described in the proviso below,

should pay or cause to be paid to the Vendor the total unpaid balance of the indebtedness in respect of the Purchase Price of the Equipment, together with interest thereon accrued and unpaid and all other payments due under this Agreement as well as expenses of the Vendor in retaking possession of, removing and storing the Equipment and the Vendor's reasonable attorneys' fees, then in such event absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Railroad; provided, further, that if the Railroad or any other persons notified under the terms of this paragraph object in writing to the Vendor within 30 days from the receipt of notice of the Vendor's election to retain the Equipment, then the Vendor may not so retain the Equipment, but shall sell, lease or otherwise dispose of it or continue to hold it pending sale, lease or other disposition as hereinafter provided or as may otherwise be permitted by law. If the Vendor shall have given no notice to retain as hereinabove provided or notice of intention to dispose of the Equipment in any other manner, it shall be deemed to have elected to sell the Equipment in accordance with the provisions of this Article 17.

At any time during the continuance of a Declaration of Default, the Vendor, with or without retaking possession thereof, at its election and upon reasonable notice to the Railroad and to any other persons to whom the law may require notice of the time and place, may sell the Equipment, or any unit thereof, free from any and all claims of the Railroad or any other party claiming from, through or under the Railroad, at law or in equity, at public or private sale and with or without advertisement as the Vendor may determine; provided, however, that if, prior to such sale and prior to the making of a contract for such sale, the Railroad should tender full payment of the total unpaid balance of the indebtedness in respect of the Purchase Price of the Equipment, together with interest thereon accrued and unpaid and all other payments due under this Agreement as well as expenses of the Vendor in retaking possession of, removing, storing, holding and preparing the Equipment for, and otherwise arranging for, the sale and the Vendor's reasonable attorneys' fees, then in such event absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Railroad. The proceeds of such sale, less the attorneys' fees and any other expenses incurred by the Vendor in retaking possession of, removing, storing,

holding, preparing for sale and selling the Equipment, shall be credited on the amount due to the Vendor under the provisions of this Agreement.

Any sale hereunder may be held or conducted at such place or places and at such time or times as the Vendor may specify, in one lot and as an entirety or in separate lots and without the necessity of gathering at the place of sale the property to be sold, and in general in such manner as the Vendor may determine. The Vendor or the Railroad may bid for and become the purchaser of the Equipment, or any unit thereof, so offered for sale. The Railroad shall be given written notice of such sale not less than ten days prior thereto, by telegram or registered mail addressed to the Railroad as provided in Article 21 hereof. If such sale shall be a private sale (which shall be deemed to mean only a sale where an advertisement for bids has not been published in a newspaper of general circulation or a sale where less than 40 railroads have been solicited in writing to submit bids), it shall be subject to the right of the Railroad to purchase or provide a purchaser, within ten days after notice of the proposed sale price, at the same price offered by the intending purchaser or a better price. In the event that the Vendor shall be the purchaser of the Equipment, it shall not be accountable to the Railroad (except to the extent of surplus money received as hereinafter provided in this Article 17), and in payment of the purchase price therefor the Vendor shall be entitled to have credited on account thereof all or any part of the sums due to the Vendor from the Railroad hereunder. From and after the date of any such sale, the Railroad shall pay to the Vendor the per diem interchange for each unit of Equipment which shall not have been assembled, as hereinabove provided, by the date of such sale for each day from the date of such sale to the date of delivery to the Purchaser at such sale.

Each and every power and remedy hereby specifically given to the Vendor shall be in addition to every other power and remedy hereby specifically given or now or hereafter existing at law or in equity, and each and every power and remedy may be exercised from time to time and simultaneously and as often and in such order as may be deemed expedient by the Vendor. All such powers and remedies shall be cumulative, and the exercise of one shall not be deemed a waiver of the right to exercise any other or others. No delay or omission of the Vendor in the exercise of any such power or

remedy and no renewal or extension of any payments due hereunder shall impair any such power or remedy or shall be contrued to be a waiver of any default or an acquiescence therein. Any extension of time for payment hereunder or other indulgence duly granted to the Railroad shall not otherwise alter or affect the Vendor's rights or the Railroad's obligations hereunder. The Vendor's acceptance of any payment after it shall have become due hereunder shall not be deemed to alter or affect the Railroad's obligations or the Vendor's rights hereunder with respect to any subsequent payments or default therein.

If, after applying all sums of money realized by the Vendor under the remedies herein provided, there shall remain any amount due to it under the provisions of this Agreement, the Railroad shall pay the amount of such deficiency to the Vendor upon demand, together with interest from the date of such demand to the date of payment by the Railroad at the rate per annum set forth in Article 4 hereof applicable to amounts remaining unpaid after becoming due and payable. If the Railroad shall fail to pay such deficiency, the Vendor may bring suit therefor and shall be entitled to recover a judgment therefor against the Railroad. If, after applying as aforesaid all sums realized by the Vendor, there shall remain a surplus in the possession of the Vendor, such surplus shall be paid to the Railroad.

The Railroad will pay all reasonable expenses, including attorneys' fees, incurred by the Vendor in enforcing its remedies under the terms of this Agreement. In the event that the Vendor shall bring any suit to enforce any of its rights hereunder and shall be entitled to judgment, then in such suit the Vendor may recover reasonable expenses, including attorneys' fees, and the amount thereof shall be included in such judgment.

The foregoing provisions of this Article 17 are subject in all respects to all mandatory legal requirements at the time in force and applicable thereto.

Article 18. Applicable State Laws. Any provision of this Agreement prohibited by any applicable law of any jurisdiction (which is not overridden by applicable federal law) shall as to such jurisdiction be ineffective, without modifying the remaining provisions of this Agreement. Where, however, the conflicting provisions of any such applicable

law may be waived, they are hereby waived by the Railroad to the full extent permitted by law, it being the intention of the parties hereto that this Agreement shall be deemed to be a conditional sale and enforced as such.

Except as otherwise provided in this Agreement, the Railroad, to the full extent permitted by law, hereby waives all statutory or other legal requirements for any notice of any kind, notice of intention to take possession of or to sell or lease the Equipment, or any unit thereof, and any other requirements as to the time, place and terms of the sale or lease thereof, any other requirements with respect to the enforcement of the Vendor's rights under this Agreement and any and all rights of redemption.

ARTICLE 19. Recording. The Railroad will cause this Agreement, any assignments hereof and any amendments or supplements hereto or thereto to be filed and recorded with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act; and the Railroad will from time to time do and perform any other act and will execute, acknowledge, deliver, file, register, deposit and record any and all further instruments required by law or reasonably requested by the Vendor for the purpose of proper protection, to the satisfaction of counsel for the Vendor, of its title to the Equipment and its rights under this Agreement or for the purpose of carrying out the intention of this Agreement; and the Railroad will promptly furnish to the Vendor certificates or other evidence of such filing, registering, depositing and recording satisfactory to the Vendor.

ARTICLE 20. Payment of Expenses. The Railroad will pay all reasonable costs and expenses (other than the fees and expenses of counsel for any Builder) incident to this Agreement and the first assignment of this Agreement, and any instrument supplemental or related hereto or thereto, including all fees and expenses of counsel for the first assignee of this Agreement, and all reasonable costs and expenses in connection with the transfer by any party of interests acquired in such first assignment. If the first assignee is not an agent, such assignee may appoint a bank or trust company located in either the Borough of Manhattan, City and State of New York, or Chicago, Illinois, having capital and surplus aggregating at least $40,000,000 to act as agent on its behalf to hold all the right, title and interests of the Builders under this Agreement assigned

to it, all upon and subject to the terms and conditions provided for in a written agreement to be entered into by the first assignee and such agent in form and substance satisfactory to the first assignee and such agent; and the Railroad hereby agrees to pay all reasonable costs and expenses of such Agent. Prior to appointing such an agent, the assignee shall consult with the Railroad and shall give reasonable consideration to the recommendations of the Railroad as to the bank or trust company to be appointed.

ARTICLE 21. Notice. Any notice hereunder to any of the parties designated below shall be deemed to be properly served if delivered or mailed to it at its chief place of business at the following specified addresses:

(a) to the Railroad, at 80 East Jackson Street, Chicago, Illinois 60604, attention of R. W. Harper, Vice President-Finance.

(b) to a Builder, at its address specified in Item 1 of Schedule A hereto, and

(c) to any assignee of the Vendor or of the Railroad, at such address as may have been furnished in writing to each of the other parties hereto by such assignee,

or at such other address as may have been furnished in writing by such party to the other parties to this Agreement.

ARTICLE 22. Article Heading; Effect and Modification of Agreement. All article headings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

This Agreement, including the Schedules hereto, exclusively states the rights of the Vendor and the Railroad with respect to the Equipment and supersedes all other agreements, oral or written, with respect to the Equipment. No variation or modification of this Agreement and no waiver of any of its provisions or conditions shall be valid unless in writing and signed by duly authorized officers of the Vendor and the Railroad.

ARTICLE 23. Law Governing. The Railroad warrants that its chief place of business and its chief executive offices are located in the State of Illinois. The terms

of this Agreement and all rights and obligations hereunder shall be governed by the laws of the State of Illinois; provided, however, that the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act and such additional rights arising out of the filing, recording or deposit hereof, if any, and of any assignment hereof as shall be conferred by the laws of the several jurisdictions in which this Agreement or any assignment hereof shall be filed, recorded or deposited.

ARTICLE 24. Execution. This Agreement may be executed in any number of counterparts, and such counterparts together shall constitute but one and the same contract. It shall not be necessary that any counterpart be signed by all the parties so long as any counterpart be signed by the Railroad and one or more Builders. If this Agreement is assigned by any Builder, the original counterpart of this Agreement shall be deemed to be the counterpart executed by such Builder and delivered to such assignee. Each Builder shall be bound hereunder, notwithstanding the failure of any other Builder to execute and deliver this Agreement, or perform its obligations hereunder. Although this Agreement is dated, for convenience, as of the date first set forth above, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

IN WITNESS WHEREOF, the parties hereto, each pursuant to due corporate authority, have caused this instrument to be executed in their respective corporate names by their officers, thereunto duly authorized, and their respective corporate seals to be hereunto affixed, duly attested, all as of the date first above written.

GENERAL MOTORS CORPORATION
(Electro-Motive Division),

by

_____
Vice President

[Corporate Seal]

Attest:

_____
Assistant Secretary

FMC CORPORATION,

by

Vice President

[Corporate Seal]

Attest:

Assistant Secretary

PULLMAN INCORPORATED
(Pullman-Standard division),

by

Vice President

[Corporate Seal]

Attest:

Assistant Secretary

GENERAL ELECTRIC COMPANY,

by

Manager-Marketing,
Locomotive Products Department

[Corporate Seal]

Attest:

Attesting Secretary

PACCAR INC,

by

Vice President

[Corporate Seal]

Attest:

Assistant Secretary

ACF INDUSTRIES, INCORPORATED,

by

_____
Vice President

[Corporate Seal]

Attest:

_____
Assistant Secretary

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY,

by

Vice President-Finance

[Corporate Seal]

Attest:

Assistant Secretary

STATE OF ILLINOIS,)
) ss.:
COUNTY OF COOK,)

On this day of 1975, before me personally appeared , to me personally known, who, being by me duly sworn, says that he is a Vice President of GENERAL MOTORS CORPORATION (Electro-Motive Division), that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Notary Public

[Notarial Seal]

My Commission Expires

STATE OF ILLINOIS,)
) ss.:
COUNTY OF COOK,)

On this 7th day of February 1975, before me personally appeared B. R. van Eck, to me personally known, who, being by me duly sworn, says that he is a Vice President of FMC CORPORATION, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Notary Public

[Notarial Seal]

My Commission Expires

My Commission Expires April 13, 1976

STATE OF ILLINOIS,)
) ss.:
COUNTY OF COOK,)

On this day of 1975, before me personally appeared , to me personally known, who, being by me duly sworn, says that he is a Vice President of PULLMAN INCORPORATED (Pullman-Standard division), that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

_____
Notary Public

[Notarial Seal]

My Commission Expires

COMMONWEALTH OF PENNSYLVANIA,)
) ss.:
COUNTY OF ERIE,)

On this day of 1975, before me personally appeared , to me personally known, who, being by me duly sworn, says that he is Manager-Marketing, Locomotive Products Department, of GENERAL ELECTRIC COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

_____
Notary Public

[Notarial Seal]

My Commission Expires

STATE OF WASHINGTON,)
) ss.:
COUNTY OF KING,)

On this day of 1975, before me personally appeared , to me personally known, who, being by me duly sworn, says that he is a Vice President of PACCAR INC, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

_____
Notary Public

[Notarial Seal]

My Commission Expires

STATE OF NEW YORK,)
) ss.:
COUNTY OF NEW YORK,)

On this day of 1975, before me personally appeared , to me personally known, who, being by me duly sworn, says that he is a Vice President of ACF INDUSTRIES, INCORPORATED, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

_____
Notary Public

[Notarial Seal]

My Commission Expires

STATE OF ILLINOIS,)
) ss.:
COUNTY OF COOK,)

On this 31st day of January 1975, before me personally appeared R. W. HARPER, to me personally known, who, being by me duly sworn, says that he is a Vice President of THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

E. K. Arreguin
Notary Public

[Notarial Seal]

My Commission Expires
FEBRUARY 1, 1977

SCHEDULE A

Item 1: (a) General Motors Corporation (Electro-Motive Division), a Delaware corporation, La Grange, Illinois 60525.

(b) FMC Corporation, a Delaware corporation, 4700 Northwest Front Avenue, Portland, Oregon 97210.

(c) Pullman Incorporated (Pullman Standard division), a Delaware corporation, 200 South Michigan Avenue, Chicago, Illinois 60604.

(d) General Electric Company, a New York corporation, 2901 East Lake Road, Erie, Pennsylvania 16501.

(e) PACCAR Inc, a Delaware corporation, 1400 North 4th Street, Renton, Washington 98055.

(f) ACF Industries, Incorporated, a New Jersey corporation, 750 Third Avenue, New York, New York 10017.

Item 2: (a) (General Motors Corporation (Electro-Motive Division)): The Builder warrants that the Equipment will be built in accordance with the Specifications and the standards and requirements set forth in Article 2 of the Conditional Sale Agreement to which this Schedule is attached (hereinafter called the Agreement) and warrants that the Equipment will be free from defects in material (except as to specialties incorporated therein which were specified by the Railroad and not manufactured by the Builder) and workmanship under normal use and service; the Builder's obligations under this paragraph being limited to making good at its plant any part or parts of any unit of the Equipment which, within two years after the delivery of such unit to the Railroad or before such unit has been in scheduled service 250,000 miles (whichever event shall first occur), shall be returned to the Builder with transportation charges

prepaid and which the Builder's examination shall disclose to its satisfaction to have been thus defective.

This warranty of the Builder shall not apply (i) to any locomotive components which shall have been repaired or altered unless repaired or altered by the Builder or its authorized service representatives, if, in its judgment, such repairs or alterations affect the stability of a unit of the Equipment or (ii) to any unit of the Equipment which has been subject to misuse, negligence or accident.

This warranty is expressly in lieu of all other warranties expressed or implied, including any implied warranty of merchantability or fitness for a particular purpose, and of all other obligations or liabilities on the part of the Builder, except for its obligations under Articles 2, 3, 4 and 14 of the Agreement. The Builder neither assumes nor authorizes any person to assume for it any other liability in connection with the construction and delivery of the Equipment, except as aforesaid.

The Builder further agrees with the Railroad that neither the inspection as provided in Article 3 of the Agreement, nor any examination, nor the acceptance of any units of the Equipment as provided in Article 3 of the Agreement shall be deemed a waiver or a modification by the Railroad of any of its rights hereunder.

The Builder further agrees to hold harmless the Railroad from claims, costs and liability to the Builder's employees arising out of and in the course of their employment and while on the Railroad's premises or equipment except when traveling as revenue passengers on the Railroad's trains, and except that the Builder shall not be liable for the Railroad's sole negligence.

The Builder reserves the right to make change

in the design of, or add any improvements to, units of the Equipment at any time without incurring any obligation to make similar changes or additions in respect of units of Equipment previously delivered to the Railroad.

(b) (FMC Corporation): The Builder warrants that the Equipment will be built in accordance with the Specifications and the standards and conditions set forth in Article 2 of the Conditional Sale Agreement to which this Schedule is attached (hereinafter called the Agreement), and, except in cases of articles and materials specified by the Railroad and not manufactured by the Builder, warrants the Equipment to be free from defects in material and workmanship under normal use and service, the liability of the Builder under this warranty being limited, as the Railroad may elect: (i) to repair of the defect at the Builder's plant at Portland, Oregon; or (ii) to replacement of the defective part; or (iii) to the cost of repair or replacement according to the AAR Code of Rules Governing Condition of and Repairs to Freight and Passenger Cars with Interchange of Traffic.

The foregoing warranty of the Builder shall begin at the time of delivery of a unit of Equipment to the Railroad and terminate one year after such delivery. <u>This warranty is expressly in lieu of all other warranties expressed or implied on the part of the Builder</u>, except for the patent indemnification included in Article 14 of of the Agreement and except as hereinafter provided in this Schedule A, and the Builder neither assumes nor authorizes any person to assume for it any other warranty liability in connection with the construction and delivery of the Equipment.

The Builder further agrees that the Railroad shall have the right to repair the Equipment furnished by the Builder of its manufacture and that repair parts for such equipment may be made by, or for, the Railroad or purchased

in the open market, as the Railroad may determine; and it is agreed the Equipment may be repaired by other railroads no matter where the repair parts are obtained. This agreement includes the right on the part of the Railroad to purchase repair parts for such Equipment in anticipation of breakage, instead of waiting until the breakage actually occurs before ordering the repair parts.

The Builder's patent indemnification set forth in Article 14 of the Agreement does not apply to designs, systems, processes and formulae utilized by the Builder in or about the construction of the Equipment, or any unit thereof, as the result of specification by the Railroad, other than for patents or other rights controlled by the Builder; and the Railroad shall indemnify and save harmless the Builder and/or manufacturer and the Vendor for the use of any designs, systems, processes and formulae utilized by the Builder in or about the construction of the Equipment, or any unit thereof, as the result of specification by the Railroad, as against any patent infringement claims or damages as specified in said Article 14, other than for patents or other rights controlled by the Builder.

The Builder will hold harmless the Railroad from claims, costs and liability to Builder's employees arising out of and in the course of their employment and while on the Railroad's premises or equipment except when traveling as revenue passengers on the Railroad's trains.

(c) (Pullman Incorporated (Pullman-Standard division)): The Builder warrants that the Equipment will be built in accordance with the Specifications and the standards and requirements set forth in Article 2 of the Conditional Sale Agreement to which this Schedule is attached (hereinafter called the Agreement) and warrants the Equipment will be free from defects in material (except as to specialties incorporated therein specified by the Railroad

and not manufactured by the Builder) and workmanship and design under normal use and service, the Builder's obligation under this Item 2 being limited to making good at its plant any part or parts of any unit of Equipment which shall, within one year after the delivery of such unit of Equipment to the Railroad, be returned to the Builder with transportation charges prepaid and which examination by the Builder shall disclose to its satisfaction to have been thus defective.

The foregoing warranty is expressly in lieu of all other warranties, expressed or implied, including any implied merchantability or fitness for a particular purpose, and of all other obligations or liabilities on the part of the Builder, except for its obligations under Articles 2, 3, 4 and 14 of the Agreement, and the Builder neither assumes nor authorizes any person to assume for it any other liability in connection with the construction of the Equipment and delivery of the Equipment, except as aforesaid. It is further understood and agreed that in no event shall the Builder be liable for indirect or consequential damages of any kind.

The Builder further agrees with the Railroad that neither the inspection provided in Article 3 of the Agreement, nor any examination, nor the acceptance of any units of the Equipment as provided in said Article 3 shall be deemed a waiver or a modification by the Railroad of any of its rights under this Item 2.

(d) (General Electric Company): The Builder warrants that the Equipment will be built in accordance with the Specifications and the standards and requirements referred to in Article 2 of the Conditional Sale Agreement to which this Schedule is attached (hereinafter called the Agreement) and warrants the equipment will be free from defects in material (except as to specialties incorporated therein that are not of the Builder's own specification or design) and workmanship under normal use

and service; the Builder's obligations under this paragraph being limited to making good at its plant any part or parts of any unit of the Equipment which, within one year after the delivery of such unit to the Railroad, shall be returned to the Builder with transportation charges prepaid and which the Builder's examination shall disclose to its satisfaction to have been thus defective.

This warranty of the Builder shall not apply (i) to any locomotive components which shall have been repaired or altered, unless repaired or altered by the Builder or its authorized service representatives, if, in its judgment, such repairs or alterations affect the stability of a unit of the Equipment or (ii) to any unit of the Equipment which has been subject to misuse, negligence or accident.

THIS WARRANTY IS EXPRESSLY IN LIEU OF ALL OTHER WARRANTIES EXPRESSED OR IMPLIED, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND OF ALL OTHER OBLIGATIONS OR LIABILITIES ON THE PART OF THE BUILDER, EXCEPT FOR ITS OBLIGATIONS UNDER THE AGREEMENT. THE BUILDER NEITHER ASSUMES NOR AUTHORIZES ANY PERSON TO ASSUME FOR IT ANY OTHER LIABILITY IN CONNECTION WITH THE CONSTRUCTION AND DELIVERY OF THE EQUIPMENT, EXCEPT AS AFORESAID.

In no event shall the Builder be liable for special or consequential damages. The Builder's liability on any claim of any kind including negligence, or for any loss or damage arising out of, connected with, or resulting from, the Agreement, or from the performance or breach thereof, or from the manufacture, sale, delivery, resale, repair or use of any unit of the Equipment covered by, or furnished under, the Agreement, shall in no case exceed the Purchase Price of such unit of the Equipment involved in the claim, and upon the expiration of the warranty period specified above all such liability shall terminate. The Builder shall have no liability

for any unit of the Equipment or part thereof which becomes defective by reason of improper storage or application, misuse, negligence, accident or improper operation, maintenance, repairs or alterations on the part of the Railroad or any third party other than the Builder. The foregoing warranty shall constitute the sole remedy of the Railroad and the sole liability of the Builder.

It is understood that the Builder has the right to make changes in the design of, or to add improvements to units of the Equipment at any time without incurring any obligations to install, at the Builder's expense, the same or other locomotives sold by Builder.

The Builder further agrees with the Railroad that neither the inspection as provided in the Agreement, nor any examination, nor the acceptance of any units of the Equipment as provided in the Agreement shall be deemed a waiver or a modification by the Railroad of any of its rights under this Item 2.

(e) (PACCAR Inc): The Builder warrants that the Equipment will be built in accordance with the requirements, specifications and standards set forth in Article 2 of the Conditional Sale Agreement to which this Schedule is attached (hereinafter called the Agreement) and, except in cases of articles and materials specified by the Railroad and not manufactured by the Builder, warrants the Equipment to be free from defects in material and workmanship under normal use and service, the liability of the Builder under this warranty being limited, as the Railroad may elect: (i) to repair of the defects at the Builder's plant; or (ii) to replacement of a defective part; or (iii) to the cost of repair or replacement according to the AAR Code of Rules Governinig Condition of and Repairs to Freight and Passenger Cars with Interchange of Traffic. The Builder shall be given reasonable opportunity to verify any claim of defects in workmanship or materials.

The foregoing warranty of the Builder shall begin at the time of delivery of a unit of the Equipment to the Railroad and terminate two years after such delivery. THE BUILDER MAKES NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. The Railroad's right under the foregoing warranty shall be its sole and exclusive remedy and the Builder will have no liability for lost profit or for indirect, incidental, consequential or commercial losses. This warranty is expressly in lieu of all other warranties express or implied on the part of the Builder, except for the patent indemnification included in Article 14 of this Agreement. The Builder neither assumes nor authorizes any person to assume for it any other warranty liability in connection with the construction and delivery of the Equipment.

The Builder further agrees with the Railroad that neither the inspection as provided in Article 3 of the Agreement nor any examination nor the acceptance of any units of the Equipment as provided in said Article 3 shall be deemed a waiver or a modification by the Railroad of any of its rights under this Item 2.

The Builder will hold harmless the Railroad from claims, costs and liability to the Builder's employees arising out of and in the course of their employment and while on the Railroad's premises or equipment except when traveling as revenue passengers on the Railroad's trains.

(f) (ACF Industries, Incorporated): The Builder warrants that the Equipment will be built in accordance with the requirements, specifications and standards set forth in Article 2 of the Conditional Sale Agreement to which this Schedule is attached (hereinafter called this Agreement) and warrants the Equipment will be free from defects in material (except as to specialties incorporated therein which were specified or supplied by the Railroad and not manufactured by the Builder) and

workmanship under normal use and service, the Builder's obligation under this Item 2 being limited to making good at its factory any part or parts of any unit of the Equipment which shall be returned to the Builder with transportation charges prepaid, within one year after the delivery of such unit to the Railroad, and which the Builder's examination shall disclose to its satisfaction to have been thus defective. The foregoing warranty of the Builder is expressly in lieu of all other warranties, express or implied, including any implied warranty of merchantability or fitness for a particular purpose, and of all other obligations or liabilities under Articles 2, 3, 4 and 14 of the Agreement, and the Builder neither assumes nor authorizes any person to assume for it any other liability in connection with the construction and delivery of the Equipment except as aforesaid.

The Builder further agrees that neither the inspection as provided in Article 3 of this Agreement nor any examination nor the acceptance of any units of the Equipment as provided in said Article 3 shall be deemed a waiver or a modification by the Owner-Trustee of any of its rights under this Item 2.

SCHEDULE B

Builder	Type	Quantity	Builder's Specifications	Builder's Plant	Railroad's Numbers (inclusive)	Unit Base Price	Total Base Price	Time and Place of Delivery
(a) General Motors Corporation (Electro-Motive Divison)	2300 h.p. GP-39-2 locomotive	29	8075	McCook, Illinois	3627-3655	$355,200	$10,300,800	Prior to April 30, 1975, at Builder's Plant
(b) FMC Corporation	60' 9" 100-ton box car with roller bearings AAR Mechanical Designation XM	400	Job 17620	Portland, Oregon	611000-611399	36,000	14,400,000	March-April, 1975, at Builder's Plant
(c) Pullman Incorporated (Pullman-Standard division)	60' 9" 100-ton box car with roller bearings; AAR Mechanical Designation XL	216	Lot Number 9783	Bessemer, Alabama	611400-611615	33,100	7,149,600	April-May, 1975, at Bessemer, Ala.

SCHEDULE B (Cont'd)

Builder	Type	Quantity	Builder's Specifications	Builder's Plant	Railroad's Numbers (inclusive)	Unit Base Price	Total Base Price	Time and Place of Delivery
(d) General Electric Company	U-36-C, 3600 h.p. locomotive; AAR Mechanical Designation C-C	6	3690E	Erie, Pennsylvania	8794-8799	$436,300	$ 2,617,800	Prior to March 1, 1975, at Erie, Pa.
(e) PACCAR Inc	52' 6", 70-ton insulated box car with roller bearing trucks, cushioned underframe, dual Air'Pak load dividers, 16' doors;	100	PC-339, as revised	Renton, Washington	522800-522899	37,100	3,710,000	Prior to March 1, 1975, at Builder's Plant
(f) ACF Industries, Incorporated	4600 cu. ft., 100-ton covered hopper car with roller bearing trucks and interior coating	400	11-01312, dated November 11, 1974	Huntington, West Virginia	314800-315199	30,000	12,000,000	February-March, 1975, at Russell, Ky.

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INTERSTATE COMMERCE COMMISSION

CONDITIONAL SALE AGREEMENT

Dated as of January 15, 1975

Among

GENERAL MOTORS CORPORATION
(Electro-Motive Division),
FMC CORPORATION,
PULLMAN INCORPORATED (Pullman Standard division)
GENERAL ELECTRIC COMPANY,
PACCAR INC,
ACF INDUSTRIES, INCORPORATED

and

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY

CONDITIONAL SALE AGREEMENT dated as of January 15, 1975, among each of the corporations named in Item 1 of Schedule A hereto and THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, a Delaware corporation (hereinafter called the Railroad).

WHEREAS each of the corporations named in Item 1 of Schedule A hereto severally have agreed to construct, sell and deliver to the Railroad, and the Railroad has agreed to purchase, the equipment described in Schedule B hereto (hereinafter called the Equipment);

NOW, THEREFORE, in consideration of the mutual promises, covenants and agreements hereinafter set forth, the parties hereto do hereby agree as follows:

ARTICLE 1. Certain Definitions; Obligations of Builders Several; Additional Agreements. The term "Vendor", whenever used in this Agreement, means, before any assignment of any of their rights hereunder, the respective corporations named in Item 1 of Schedule A hereto and any successor or successors for the time being to their respective manufacturing properties and businesses, and, after any such assignment, both any assignee or assignees for the time being of such particular assigned rights as regards such rights, and also any assignor as regards any rights hereunder that are retained or excluded from any assignment. Whenever the term "Vendor" refers to a corporation named in Item 1 of Schedule A hereto, such term shall mean any or all such corporations, as the context may require. The term "Builder", whenever used in this Agreement, means, both before and after any such assignment, each of the respective corporations (as to the units of Equipment to be constructed by such corporation and sold hereunder) named in Item 1 of Schedule A hereto and any successor or successors for the time being to their respective manufacturing properties and businesses.

The rights and obligations of the Builders under this Agreement are several in accordance with their interests and not joint. Accordingly, whenever this Agreement, by the use of such designation as "the Vendor", "such Builder" or other similar term, confers a right or imposes an obligation upon any corporation named in Item 1 of Schedule A hereto or its successor, such right or obligation shall be

construed to accrue to or to be enforceable against only the specific corporation furnishing the units of Equipment giving rise to such right or obligation and its successors as herein provided.

Additional Agreements, if any, set forth in Schedule A hereto shall be deemed to be a part of this Agreement as fully as though set forth in full in this instrument.

ARTICLE 2. Construction and Sale. Pursuant to this Agreement, each Builder shall construct the units of the Equipment to be constructed by it as described in Schedule B hereto (such Equipment with respect to each Builder being hereinafter sometimes called its Equipment) and will sell and deliver to the Railroad, and the Railroad will purchase from such Builder and accept delivery of and pay for (as hereinafter provided), such Equipment, each unit of which shall be constructed in accordance with the specifications set forth therefor in Schedule B hereto and in accordance with such modifications thereof as may be agreed upon in writing between such Builder and the Railroad (which specifications and modifications, if any, are hereinafter called the Specifications). The design, quality and component parts of each unit of the Equipment shall conform, on the date of completion of manufacture of each thereof, to all Department of Transportation and Interstate Commerce Commission requirements and specifications and to all standards recommended by the Association of American Railroads reasonably interpreted as being applicable to equipment of the character of such units of the Equipment and each unit of the Equipment (except to the extent, if any, referred to in Schedule A hereto and/or in Article 8 hereof) will be new railroad equipment.

ARTICLE 3. Inspection and Delivery. Each Builder will deliver the units of its Equipment to the Railroad at the place or places specified in Schedule B hereto (or if Schedule B does not specify a place or places, at the place or places designated from time to time by the Railroad), freight charges, if any, prepaid, in accordance with the delivery schedule set forth in Schedule B hereto; provided, however, that no Builder shall have any obligation to deliver any unit of its Equipment hereunder at any time after the commencement of any proceedings specified in clause (c) or (d) of Article 16 hereof or if any event of default (as described in Article 16 hereof), or event which with lapse of time and/or demand would constitute such an event of default, shall have occurred.

Each Builder's obligation as to time of delivery is subject, however, to delays resulting from causes beyond the Builder's reasonable control, including but not limited to acts of God, acts of government such as embargoes, priorities and allocations, war or war conditions, riot or civil commotion, sabotage, strikes, differences with workmen, accidents, fire, flood, explosion, damage to plant, equipment or facilities, delays in receiving necessary materials or delays of carriers or subcontractors.

Notwithstanding the preceding provisions of this Article 3, any Equipment not delivered, accepted and settled for pursuant to Article 4 hereof on or before August 31, 1975, shall be excluded herefrom. If any unit or units of Equipment shall be excluded from this Agreement pursuant to the immediately preceding sentence, the Builder or Builders of such unit or units and the Railroad shall execute an agreement supplemental hereto limiting this Agreement to the units of Equipment not so excluded herefrom. If a Builder's failure to deliver Equipment so excluded from this Agreement resulted from one or more of the causes set forth in the immediately preceding paragraph, the Railroad shall nevertheless be obligated to accept such Equipment and pay the full purchase price therefor, determined as provided in this Agreement, if and when such Equipment shall be completed and delivered by such Builder, such payment to be in cash on the delivery of such Equipment, either directly or, in case the Railroad shall arrange therefor, by means of a conditional sale agreement, equipment trust or such other appropriate method of financing as the Railroad shall determine and as shall be reasonably acceptable to such Builder.

During construction, the Equipment shall be subject to inspection and approval by the authorized inspectors of the Railroad and each Builder shall grant to such authorized inspectors reasonable access to its plant. Each Builder agrees to inspect all materials used in the construction of the Equipment in accordance with the standard quality control practices of such Builder. Upon completion of each unit or of a number of units of the Equipment, such unit or units shall be presented to an inspector of the Railroad for inspection at the place specified for delivery of such unit or units, and if each such unit conforms to the Specifications, requirements and standards applicable thereto, such inspector or an authorized representative of the Railroad shall execute and deliver to such Builder a certificate of acceptance (hereinafter called the Certificate of Accep-

tance) stating that such unit or units have been inspected and accepted on behalf of the Railroad and are marked in accordance with Article 7 hereof; provided, however, that such Builder shall not thereby be relieved of its warranty referred to in Article 14 hereof.

On delivery of each such unit hereunder at the place specified for delivery, the Railroad will assume the responsibility and risk of, and shall not be released from its obligations hereunder in the event of, any damage to or the destruction or loss of such unit; provided, however, that such delivery shall not thereby relieve a Builder of its warranty referred to in Article 14 hereof.

ARTICLE 4. Purchase Price and Payment. The base price or prices per unit of the Equipment are set forth in Schedule B hereto. Such base price or prices are subject to such increase or decrease as may be agreed to by the Builder thereof and the Railroad. The term "Purchase Price" as used herein shall mean the base price or prices as so increased or decreased. If the aggregate Purchase Price of Equipment for which settlement has been made under this Agreement is in an amount not less than $50,250,000, the Railroad may, at its option, exclude from this Agreement any unit or units of Equipment for which settlement has not been made and the appropriate Builder or Builders of such unit or units (and any assignee of such Builder or Builders) shall, upon request of the Railroad enter into an agreement supplemental hereto evidencing such exclusion. The Railroad agrees to purchase any such unit or units so excluded from this Agreement and to pay the Builder in cash on the date such unit or units would otherwise have been settled for under this Agreement either directly, or, if the Builder and the Railroad shall mutually agree, by means of a conditional sale, equipment trust or other appropriate method of financing.

For the purpose of making settlement, the Equipment shall be divided into such number of groups (not more than three) of units of the Equipment, delivered to and accepted by the Railroad (each such group being hereinafter called a Group), as the respective Builder, the Railroad and the Vendor may agree to.

The Railroad hereby acknowledges itself to be indebted to the Vendor in the amount of, and hereby promises to pay in cash to the Vendor at such place as the Vendor

may designate, the Purchase Price of the Equipment, as follows:

(a) on each Closing Date (as hereinafter defined) the amount, if any, by which (x) the aggregate Purchase Price of all units of the Equipment for which settlement has theretofore and is then being made, as stated in the invoice or invoices presented in respect of such Closing Date (said invoiced prices being hereinafter called the Invoiced Purchase Prices), exceeds (y) the sum of $50,000,000 and any amount or amounts previously paid or payable with respect to the Invoiced Purchase Prices pursuant to this subparagraph (a); and

(b) in 15 consecutive equal (to the nearest multiple of $1,000, except for appropriate adjustment of the final instalment in case the amount payable pursuant to this subparagraph (b) shall not, when divided by 15, result in an amount ending in a multiple of $1,000) annual instalments, as hereinafter provided, an amount equal to the aggregate of the Invoiced Purchase Prices for all the Equipment less the amount paid or payable with respect thereto pursuant to subparagraph (a) of this paragraph (the aggregate of said instalments being hereinafter called the Conditional Sale Indebtedness).

In the event that on any Closing Date the final Purchase Price of any Group has not been finally determined, the invoice presented may be a preliminary invoice, subject to upward adjustment upon determination of the final Purchase Price, and a supplemental invoice may be presented by the Builder at least ten days prior to any subsequent Closing Date for settlement on such subsequent Closing Date for any increase in the Purchase Price; it being understood and agreed by the Builders that any preliminary invoice or invoices presented by the Builders in respect of any Group shall be in amount not in excess of the final Purchase Price of such Group.

The instalments of the Conditional Sale Indebtedness payable pursuant to subparagraph (b) of the third paragraph of this Article 4 shall be payable annually on May 15 in each year commencing on May 15, 1976, to and including May 15, 1990. The unpaid portion of the Conditional Sale Indebtedness shall bear interest from the respective Closing Dates on which such indebtedness was incurred at the rate of 9-3/4% per annum. Such interest shall be payable, to the extent accrued, on May 15 and November 15 in each year, commencing May 15, 1975.

The term "Closing Date" with respect to any Group of the Equipment shall mean March 3, 1975, and such other dates (after March 3, 1975, and prior to August 31, 1975,) not more than 10 business days following presentation by a Builder to the Railroad of the invoice and the Certificate or Certificates of Acceptance for such Group, as shall be fixed by the Railroad by written notice delivered to the Vendor at least six business days prior to the Closing Date designated therein; it being understood and agreed, however, that the aggregate Purchase Price of all Equipment settled for on Closing Dates prior to April 1, 1975, shall not exceed $26,000,000. The term "business days" as used herein means calendar days, excluding Saturdays, Sundays and any other day on which banking institutions in Chicago, Illinois, or New York, New York, are authorized to remain closed.

All interest under this Agreement shall be calculated on the basis of a 360-day year of twelve 30-day months.

The Railroad will pay, to the extent legally enforceable, interest at the rate of 10-3/4% per annum upon all amounts remaining unpaid after the same shall have become due and payable pursuant to the terms hereof, anything herein to the contrary notwithstanding.

All payments provided for in this Agreement shall be made in such coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts. Except as provided in Article 8 hereof, the Railroad shall not have the privilege of prepaying any instalment of its indebtedness hereunder prior to the date it becomes due.

In the event the Vendor, pursuant to Article 15 hereof, assigns the right to receive the payments herein provided to be made by the Railroad, the assignee thereof may request the Railroad to make and the Railroad shall make such payments to it at such address as shall be supplied to the Railroad by the assignee.

ARTICLE 5. Taxes. All payments to be made by the Railroad hereunder will be free of expense to the Vendor for collection or other charges and will be free of expense to the Vendor with respect to the amount of any local, state, federal or foreign taxes (other than net income, gross receipts [except gross receipts taxes in the nature of or in lieu of sales or use taxes], excess profits and similar taxes) or license fees, assessments, charges, fines or penal-

ties hereafter levied or imposed upon or in connection with or measured by, this Agreement or any sale, use, payment, shipment, delivery or transfer of title under the terms hereof (all such expenses, taxes, license fees, assessments, charges, fines and penalties being hereinafter called impositions), all of which impositions the Railroad assumes and agrees to pay on demand. The Railroad will also pay promptly all impositions which may be imposed upon the Equipment delivered to it or for the use or operation thereof or upon the earnings arising therefrom or upon the Vendor solely by reason of its ownership thereof and will keep at all times all and every part of the Equipment free and clear of all impositions which might in any way affect the title of the Vendor or result in a lien upon any part of the Equipment; provided, however, that the Railroad shall be under no obligation to pay any impositions of any kind so long as it is contesting in good faith and by appropriate legal proceedings such impositions and the nonpayment thereof does not, in the opinion of the Vendor, adversely affect the property or rights of the Vendor in or to the Equipment or otherwise under this Agreement. If any such impositions shall have been charged or levied against the Vendor directly and paid by the Vendor, the Railroad shall reimburse the Vendor upon presentation of an invoice therefor, and any amounts so paid by the Vendor shall be secured by and under this Agreement; provided, however, that the Railroad shall not be obligated to reimburse the Vendor for any impositions so paid unless the Vendor shall have been legally liable with respect thereto (as evidenced by an opinion of counsel for the Vendor) or unless the Railroad shall have approved the payment thereof.

ARTICLE 6. Title to the Equipment. The Vendor shall and hereby does retain the full legal title to and property in the Equipment until the Railroad shall have made all its payments under this Agreement and shall have kept and performed all its agreements herein contained, notwithstanding the delivery of the Equipment to and the possession and use thereof by the Railroad as provided in this Agreement. Any and all additions to the Equipment and any and all replacements of the Equipment and of parts thereof and additions thereto shall constitute accessions to the Equipment and shall be subject to all the terms and conditions of this Agreement and included in the term "Equipment" as used in this Agreement.

Except as otherwise specifically provided in Article 8 hereof, when and only when the full indebtedness in

respect of the Purchase Price of the Equipment, together with interest and all other payments as herein provided, shall have been paid, and all the Railroad's obligations herein contained shall have been performed by the Railroad, absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Railroad without further transfer or action on the part of the Vendor. However, the Vendor, if so requested by the Railroad at that time, will (a) execute a bill or bills of sale for the Equipment transferring its title thereto and property therein to the Railroad, or upon its order, free of all liens, security interests and other encumbrances created or retained hereby and deliver such bill or bills of sale to the Railroad at its address referred to in Article 21 hereof, (b) execute and deliver at the same place, for filing, recording or depositing in all necessary public offices, such instrument or instruments in writing as may be necessary or appropriate in order then to make clear upon the public records the title of the Railroad to the to the Equipment and (c) pay to the Railroad any money paid to the Vendor pursuant to Article 8 hereof and not theretofore applied as therein provided. The Railroad hereby waives and releases any and all rights, existing or that may be acquired, in or to the payment of any penalty, forfeit or damages for failure to execute and deliver such bill or bills of sale or instrument or instruments or to file any certificate of payment in compliance with any law or statute requiring the filing of the same, except for failure to execute and deliver such bill or bills of sale or instrument or instruments or to file such certificate within a reasonable time after written demand by the Railroad.

ARTICLE 7. Marking of the Equipment. The Railroad will cause each unit of the Equipment to be kept numbered with its identifying number as set forth in Schedule B hereto, or in the case of Equipment not there listed such identifying number as shall be set forth in any amendment or supplement hereto extending this Agreement to cover such Equipment, and will keep and maintain, plainly, distinctly, permanently and conspicuously marked on each side of each unit, in letters not less than one inch in height, the words "Ownership subject to a Security Interest Filed under the Interstate Commerce Act, Section 20c" or other appropriate markings approved by the Vendor, with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the Vendor's title to and property in the Equipment and its rights under this Agreement. The

Railroad will not place any such unit in operation or exercise any control or dominion over the same until such markings have been made thereon and will replace promptly any such markings which may be removed, defaced or destroyed. The Railroad will not change the number of any unit of the Equipment except in accordance with a statement of new number or numbers to be substituted therefor, which statement previously shall have been filed with the Vendor by the Railroad and filed, recorded and deposited by the Railroad in all public offices where this Agreement shall have been filed, recorded and deposited.

Except as provided in the immediately preceding paragraph, the Railroad will not allow the name of any person, association or corporation to be placed on any unit of the Equipment as a designation that might be interpreted as a claim of ownership; provided, however, that the Railroad may cause the Equipment to be lettered with the names or initials or other insignia of the Railroad or its affiliates.

ARTICLE 8. Casualty Occurrences. In the event that any unit of the Equipment shall be worn out, lost, stolen, destroyed, irreparably damaged or otherwise rendered permanently unfit for use from any cause whatsoever, or taken or requisitioned by condemnation or otherwise (such occurrences being hereinafter called Casualty Occurrences), the Railroad shall promptly (after it has knowledge of such Casualty Occurrence) and fully inform the Vendor in regard thereto. When the aggregate Casualty Value (as defined herein) of all units having suffered a Casualty Occurrence (exclusive of units having suffered a Casualty Occurrence with respect to which a payment shall have been made to the Vendor pursuant to this Article 8) hereunder shall exceed $250,000 (or such lesser amount as the Railroad may elect), the Railroad, within 90 days after the Railroad has knowledge of such event, shall file with the Vendor a certificate of an officer of the Railroad setting forth the Casualty Value of each unit of the Equipment having suffered a Casualty Occurrence and shall pay to the Vendor a sum equal to the aggregate Casualty Value as of the date of such payment of such unit or units of the Equipment having suffered a Casualty Occurrence, together with interest on such sum so being prepaid accrued to the date of such prepayment, but without premium, (the Railroad hereby agreeing to make such payment of accrued interest to the Vendor at the time it makes payment of such Casualty Value to the Vendor); provided, however, if and so long as no event of default

shall have occurred and be continuing hereunder, in lieu of making all or any portion of such payment to the Vendor, the Railroad may, on or before the expiration of such 90-day period, cause to be transferred to the Vendor a replacement unit or units of standard gauge railroad equipment (other than passenger or work equipment of types other than locomotives) and receive credit against the Casualty Value payment it would otherwise have been required to make in an amount equal to the value threof. The value of any unit or units of replacement equipment shall be equal to the cost thereof, if new, as specified in the invoice therefor delivered to the Vendor or, if not new, the lesser of (y) the fair market value thereof or (z) the original cost thereof less depreciation at a rate equal to 1/15th of such cost for each year in service, all as set forth in a certificate of an officer of the Railroad delivered to the Vendor at the time of such replacement. Any unit of replacement equipment shall have a remaining useful life (as evidenced by a certificate of an operating officer at the Railroad) at least as long as that which the Equipment being replaced would have had but for the Casualty Occurrence. In case any money is applied to prepay indebtedness, it shall be so applied, together with the interest due thereon, on the business day next following receipt by the Vendor of the appropriate payment, to reduce instalments of the aggregate Conditional Sale Indebtedness thereafter falling due in the inverse order of maturity thereof without premium.

The Casualty Value of each unit of the Equipment (other than a replacement unit) shall be deemed to be that amount which bears the same ratio to the original Purchase Price thereof (less, in the event that the Railroad shall have made any payment or payments under the provisions of subparagraph (a) of the third paragraph of Article 4 hereof, an amount which bears the same ratio to the aggregate of all such payments as the original Purchase Price of such unit bears to the original aggregate Purchase Price of all the Equipment) as the unpaid Conditional Sale Indebtedness (without giving effect to any prepayments then or theretofore made pursuant to this Article 8) as of the date payment is made with respect to such Casualty Occurrence bears to the original Conditional Sale Indebtedness. The Casualty Value of each replacement unit shall be deemed to be that amount which bears the same ratio to the portion of the cost thereof paid by the Vendor as the unpaid Conditional Sale Indebtedness ness (without giving effect to any prepayments then or theretofore made pursuant to this Article 8) as of the date payment

is made with respect to such Casualty Occurrence bears to the unpaid Conditional Sale Indebtedness (without giving effect to any such prepayments) as of the date of acquisition by the Vendor of such replacement unit.

The Railroad will cause any replacement unit or units to be marked as provided in Article 7 hereof. Any and all such replacements of Equipment shall constitute accessions to the Equipment and shall be subject to all appropriate terms and conditions of this Agreement as though part of the original Equipment delivered hereunder and shall be included in the term "Equipment" as used in this Agreement. Title to all such replacement units shall be free and clear of all liens and encumbrances except the liens permitted by the second paragraph of Article 12 hereof and shall be taken initially and shall remain in the name of the Vendor subject to the provisions hereof, and the Railroad shall execute, acknowledge, deliver, file, record or deposit all such documents and do any and all such acts as may be necessary to cause such replacement units to come under and be subject to this Agreement. All such replacement units shall be guaranteed and warranted in like manner as is customary at the time for similar equipment. Whenever the Railroad shall cause to be transferred to the Vendor a unit or units of replacement Equipment, the Railroad shall deliver to the Vendor an executed counterpart of an opinion of counsel covering the matters set forth in this paragraph.

In order to facilitate the sale or other disposition of any Equipment suffering a Casualty Occurrence, in respect of which the Railroad shall have paid to the Vendor the Casualty Value and/or shall have caused to be transferred to the Vendor a unit or units of replacement Equipment, the Vendor shall, upon request of the Railroad, execute and deliver to the Railroad or the Railroad's vendee, assignee or nominee, a bill of sale (without warranties) for such Equipment, and such other documents as may be required to release such Equipment from the terms and scope of this Agreement, in such form as may be reasonably requested by the Railroad.

The Railroad will at all times prior to the payment in full of the Conditional Sale Indebtedness together with interest thereon and all other payments required hereby, at its own expense, cause to be carried and maintained insurance in respect of the Equipment consisting of locomotives at the time subject hereto, and public liability insurance,

in amounts and against risks customarily insured against by railroad companies on similar equipment, and in any event in amounts and against risks comparable to those insured against by the Railroad on equipment owned by it; provided, however, that the Railroad may act as self-insurer in respect of losses and damage not exceeding $3,000,000 in respect of any single occurrence.

ARTICLE 9. Maintenance; Compliance with Laws and Rules. The Railroad will at all times maintain the Equipment or cause the Equipment to be maintained in good order and repair at its own expense.

During the term of this Agreement, the Railroad will at all times comply in all respects with all laws of the jurisdictions in which its operations involving the Equipment may extend, with the interchange rules of the Asociation of American Railroads and with all lawful rules of the Department of Transportation, Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Equipment, to the extent that such laws and rules affect the title, operation or use of the Equipment, and in the event that such laws or rules require any alteration, replacement or addition of any part on any unit of the Equipment, the Railroad will conform therewith, at its own expense; provided, however, that the Railroad may, in good faith, contest the validity or application of any such law or rule in any reasonable manner which does not, in the opinion of the Vendor, adversely affect the property or rights of the Vendor under this Agreement.

ARTICLE 10. Reports and Inspections. On or before March 31 in each year, commencing with the calendar year 1976, the Railroad shall furnish to the Vendor an accurate statement signed by an officer of the Railroad (a) setting forth as at the preceding December 31 the amount, description and numbers of all units of the Equipment that have suffered a Casualty Occurrence during the preceding calendar year (or since the date of this Agreement in the case of the first such statement) or that have been withdrawn from use pending repairs (other than running repairs) and such other information regarding the condition and state of repair of the Equipment as the Vendor may reasonably request and (b) stating that, in the case of all Equipment repaired or repainted during the period covered by such statement, the numbers and markings required by Article 7 hereof have

been preserved or replaced. During the term of this Agreement, the Vendor shall have the right, by its agents, to inspect the Equipment and the Railroad's records with respect thereto at such times and locations as the Vendor may reasonably request.

The Railroad shall furnish (i) as soon as available and in any event within 60 days after the end of each quarterly period, except the last, of each fiscal year, a balance sheet of the Railroad (as filed with the Interstate Commerce Commission (hereinafter called the ICC)) as at the end of such period, and an income statement of the Railroad as filed with the ICC for the period beginning on the first day of such fiscal year and ending on the date of such balance sheet, setting forth comparative figures for the corresponding period of the preceding fiscal year, all in reasonable detail and certified by the principal accounting officer of the Railroad, and (ii) as soon as available and in any event within 120 days after the end of each fiscal year, a copy of the Railroad's annual report as filed with the ICC, which shall include the balance sheet, income statement and statement of retained income of the Railroad certified by the principal accounting officer of the Railroad and which shall be accompanied by a letter from the independent accountants for Santa Fe Industries, Inc., the parent of the Railroad, stating that such financial statements, restated to generally accepted accounting principles, were included in the certified consolidated financial statement of Santa Fe Industries, Inc., and that such certified financial statements are not qualified with respect to the Railroad and, in the event a restatement to generally accepted accounting principles is required, such letter shall be accompanied by a schedule which shall describe such restatement in reasonable detail.

ARTICLE 11. Possession and Use. The Railroad, so long as an event of default shall not have occurred under this Agreement and be continuing, shall be entitled to the possession of the Equipment and the use thereof upon the lines of railroad owned or operated by it either alone or jointly with others and whether under lease or otherwise, or upon the lines of railroad owned or operated by any railroad company controlled by, or under common control with, the Railroad, or over which it has trackage rights, or upon connecting and other carriers in the usual interchange of traffic, from and after delivery of the Equipment by the Builder to the Railroad, but only upon and subject to all the terms and conditions of this Agreement.

ARTICLE 12. Prohibition Against Liens. The Railroad will pay or discharge any and all sums claimed by any party from, through or under the Railroad or its successors or assigns which, if unpaid, might become a lien, charge or security interest on the Equipment, or any unit thereof, equal or superior to the Vendor's title thereto or property therein; provided, however, that the Railroad shall be under no obligation to pay or discharge any such claim so long as it is contesting in good faith and by appropriate legal proceedings such claim and the nonpayment thereof does not, in the opinion of the Vendor, adversely affect the property or rights of the Vendor in or to the Equipment or otherwise under this Agreement. Any amounts paid by the Vendor in discharge of liens, charges or security interests upon the Equipment shall be secured by and under this Agreement.

This covenant will not be deemed breached by reason of liens for taxes, assessments or governmental charges or levies, in each case not due and delinquent, or undetermined or inchoate materialmen's, mechanics', workmen's, repairmen's or other like liens arising in the ordinary course of business and, in each case, not delinquent.

ARTICLE 13. Railroad's Indemnities. The Railroad agrees to indemnify, protect and hold harmless the Vendor from and against all losses, damages, injuries, liabilities, claims and demands whatsoever, regardless of the cause thereof, and expenses in connection therewith, including counsel fees, arising out of retention by the Vendor of title to the Equipment, the use and operation thereof by the Railroad during the period when title thereto remains in the Vendor or the transfer of title to the Equipment by the Vendor pursuant to any of the provisions of this Agreement, except, however, any losses, damages, injuries, liabilities, claims and demands whatsoever arising out of any tort, breach of warranty or failure to perform any covenant hereunder by any Builder. This covenant of indemnity shall continue in full force and effect notwithstanding the full payment of all sums due under this Agreement, or the satisfaction, discharge or termination of this Agreement in any manner whatsoever.

ARTICLE 14. Patent Indemnities; Builder's Warranty of Material and Workmanship. Except in cases of articles or materials specified by the Railroad and not manufactured by a Builder and in cases of designs, systems, processes, formulae or combinations specified by the Railroad and not

developed or purported to be developed by any Builder, each Builder agrees to indemnify, protect and hold harmless the Railroad from and against any and all liability, claims, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Railroad, its assigns or the users of its respective Equipment because of the use in or about the construction or operation of any of the Equipment of any design, system, process, formula, combination, article or material which infringes or is claimed to infringe on any patent or other right. The Railroad likewise will indemnify, protect and hold harmless the Vendor from and against any and all liability, claims, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Vendor because of the use in or about the construction or operation of any of the Equipment of any article or material specified by the Railroad and not manufactured by a Builder or of any design, system, process, formula or combination specified by the Railroad and not developed or purported to be developed by a Builder which infringes or is claimed to infringe on any patent or other right. Each Builder agrees to and hereby does, to the extent legally possible without impairing any claim, right or cause of action hereinafter referred to, assign, set over and deliver to the Railroad every claim, right and cause of action which such Builder has or hereafter shall have against the seller or sellers of any designs, systems, processes, formulae, combinations, articles or materials specified by the Railroad and purchased or otherwise acquired by such Builder for use in or about the construction or operation of any of the Equipment on the ground that any such design, system, process, formula, combination, article or material or operation thereof infringes or is claimed to infringe on any patent or other right. Each Builder further agrees to execute and deliver to the Railroad or the users of the Equipment all and every such further assurance as may be reasonably requested by the Railroad more fully to effectuate the assignment and delivery of every such claim, right and cause of action. Each Builder will give notice to the Railroad of any claim known to such Builder from which liability may be charged against the Railroad hereunder and the Railroad will give notice to the appropriate Builder of any claim known to the Railroad from which liability may be charged against any Builder hereunder. Such covenants of indemnity shall continue in full force and effect notwithstanding the full payment of all sums due under this Agreement, or the satisfaction,

discharge or termination of this Agreement in any manner whatsoever.

Each Builder's warranty of material and workmanship is set forth in Schedule A hereto.

ARTICLE 15. Assignments. The Railroad will not sell, assign, transfer or otherwise dispose of its rights under this Agreement or, except as provided in Article 11 hereof, transfer the right to possession of any unit of the Equipment without first obtaining the written consent of the Vendor. A sale, assignment, transfer or disposition to a railroad company organized under the laws of the United States of America or any of the states thereof which shall acquire all or substantially all the lines of railroad of the Railroad, and which, by execution of an appropriate instrument satisfactory to the Vendor, shall assume and agree to perform each of, and all, the obligations and covenants of the Railroad under this Agreement, shall not be deemed a breach of this covenant.

All or any of the rights, benefits and advantages of the Vendor under this Agreement, including the right to receive the payments herein provided to be made by the Railroad, may be assigned by the Vendor and reassigned by any assignee at any time or from time to time. No such assignment shall subject any assignee to, or relieve any Builder from, any of the obligations of such Builder to construct and deliver the Equipment in accordance with this Agreement or to respond to its respective warranties and indemnities contained or referred to in Article 14 hereof, or relieve the Railroad of any of its obligations to such Builders under Articles 2, 3, 4, 5, 13 and 14 hereof, Schedule A hereto and this Article 15 or of any other obligation which, according to its terms or context, is intended to survive an assignment.

Upon any such assignment either the assignor or the assignee shall give written notice to the Railroad, together with a counterpart or copy of such assignment, stating the identity and post office address of the assignee, and such assignee shall by virtue of such assignment acquire all the assignor's right, title and interest in and to the Equipment and this Agreement, or in and to a portion thereof, as the case may be, subject only to such reservations as may be contained in such assignment. From and after the receipt by the Railroadd of the notification of any such

assignment, all payments thereafter to be made by the Railroad under this Agreement shall, to the extent so assigned, be made to the assignee in such manner as it may direct.

The Railroad recognizes that it is the custom of railroad equipment manufacturers to assign conditional sale agreements and understands that the assignment of this Agreement, or of some of or all the rights of the Vendor hereunder, is contemplated. The Railroad expressly represents, for the purpose of assurance to any person, firm or corporation considering the acquisition of this Agreement or of all or any of the rights of the Vendor hereunder and for the purposes of inducing such acquisition, that in the event of such assignment by the Vendor as hereinbefore provided, the rights of such assignee to the entire unpaid indebtedness in respect of the Purchase Price or such part thereof as may be assigned, together with interest thereon, as well as any other rights hereunder which may be so assigned, shall not be subject to any defense, setoff, counterclaim or recoupment whatsoever arising out of any breach of any obligation of a Builder with respect to the Equipment or the manufacture, construction, delivery or warranty thereof, or with respect to any indemnity herein contained, nor subject to any defense, setoff, counterclaim or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to the Railroad by a Builder. Any and all such obligations, howsoever arising, shall be and remain enforceable by the Railroad against and only against the respective Builders.

The Railroad will (a) in connection with each settlement for the Equipment subsequent to such assignment, deliver to the assignee, at least five business days prior to the Closing Date for the Group fixed in the notice by the Railroad, all documents required by the terms of such assignment to be delivered to such assignee in connection with such settlement, in such number of counterparts or copies as may reasonably be requested, except for any opinion of counsel for such assignee, and (b) furnish to such assignee such number of counterparts of any other certificate or paper required by the Vendor as may reasonably be requested.

If this Agreement shall have been assigned by the Builders and the assignee shall not make payment to a Builder with respect to units of its Equipment as provided in the instrument making such assignment, such Builder will promptly notify the Railroad of such event and, if such

amount shall not have been previously paid by such assignee, the Railroad will, not later than 90 days after the date such payment was due, pay or cause to be paid to such Builder the aggregate unpaid Purchase Price of such units of its Equipment, together with interest from the day such payment was due to the date of payment by the Railroad at the highest prime rate of interest charged by any of the four New York City banks having the largest total assets, in effect on the date such payment was due.

ARTICLE 16. Defaults. In the event that any one or more of the following events of default shall occur and be continuing, to wit:

(a) the Railroad shall fail to pay in full any indebtedness in respect of the Purchase Price of the Equipment or any other sum payable by the Railroad as provided in this Agreement within ten days after payment thereof shall be due hereunder; or

(b) the Railroad shall, for more than 30 days after the Vendor shall have demanded in writing performance thereof, fail or refuse to comply with any covenant, agreement, term or provision of this Agreement, or of any agreement entered into concurrently herewith relating to the financing of the Equipment on its part to be kept or performed or to make provision satisfactory to the Vendor for such compliance; or

(c) a petition for reorganization under Section 77 of the Bankruptcy Act, as now constituted or as said Section 77 may be hereafter amended, shall be filed by or against the Railroad and, unless such petition shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Railroad under this Agreement shall not have been (and shall not continue to have been) duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees appointed (whether or not subject to ratification) in such proceedings in such manner that such obligations shall have the same status as obligations incurred by such trustee or trustees, within 30 days after such appointment, if any, or 60 days after such petition shall have been filed, whichever shall be earlier; or

(d) any other proceedings shall be commenced by or against the Railroad for any relief under any bankruptcy or insolvency law, or law relating to the relief of debtors, readjustments of indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which does not permit any readjustment of the indebtedness payable hereunder), and, unless such proceedings shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Railroad under this Agreement shall not have been (and shall not continue to have been) duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed (whether or not subject to ratification) for the Railroad or for its property in connection with any such proceedings in such manner that such obligations shall have the same status as obligations incurred by such trustee or trustees or receiver or receivers, within 30 days after such appointment, if any, or 60 days after such proceedings shall have been commenced, whichever shall be earlier; or

(e) the Railroad shall make or suffer any unauthorized assignment or transfer of this Agreement or any interest herein or any unauthorized transfer of the right to possession of any unit of the Equipment;

then at any time after the occurrence of such an event of default the Vendor may, upon written notice to the Railroad and upon compliance with any mandatory legal requirements then in force and applicable to such action by the Vendor, declare (hereinafter called a Declaration of Default) the entire indebtedness in respect of the Purchase Price of the Equipment, together with the interest thereon then accrued and unpaid, immediately due and payable, without further demand, and thereafter the aggregate of the unpaid balance of such indebtedness and interest shall bear interest from the date of such Declaration of Default at the rate per annum specified in Article 4 hereof as being applicable to amounts remaining unpaid after becoming due and payable, to the extent legally enforceable. The Vendor shall thereupon be entitled to recover judgment for the entire unpaid balance of the indebtedness in respect of the Purchase Price of the Equipment so payable, with interest as aforesaid, and to collect such judgment out of any property of

the Railroad wherever situated. The Railroad shall promptly notify the Vendor of any event which has come to its attention which constitutes, or which with the giving of notice and/or lapse of time could constitute, an event of default under this Agreement.

The Vendor may at its election waive any such event of default and its consequences and rescind and annul any Declaration of Default by notice to the Railroad in writing to that effect, and thereupon the respective rights of the parties shall be as they would have been if no such event of default had occurred and no Declaration of Default had been made. Notwithstanding the provisions of this paragraph, it is expressly understood and agreed by the Railroad that time is of the essence of this Agreement and that no such waiver, rescission or annulment shall extend to or affect any other or subsequent default or impair any rights or remedies consequent thereon.

ARTICLE 17. Remedies. At any time during the continuance of a Declaration of Default, the Vendor may, subject to compliance with any mandatory legal requirements then in force and applicable to the action to be taken by the Vendor, take or cause to be taken by its agent or agents immediate possession of the Equipment, or one or more of the units thereof, without liability to return to the Railroad any sums theretofore paid and free from all claims whatsoever, except as hereinafter in this Article 17 expressly provided, and may remove the same from possession and use of the Railroad or any other person and for such purpose may enter upon the Railroad's premises or any other premises where the Equipment may be located and may use and employ in connection with such removal any supplies, services and aids and any available trackage and other facilities or means of the Railroad.

In case the Vendor shall demand possession of the Equipment pursuant to this Agreement and shall reasonably designate a point or points upon the premises of the Railroad for the delivery of the Equipment to the Vendor, the Railroad shall, at its own expense, forthwith and in the usual manner (including, but not by way of limitation, giving prompt telegraphic and written notice to the Association of American Railroads and all railroads to which any part of the Equipment has been interchanged to return the Equipment so interchanged), cause (a) the Equipment to be moved to such point or points on its lines as shall

be designated by the Vendor and shall there deliver the Equipment or cause it to be delivered to the Vendor and (b) the Equipment to be moved to such interchange point or points of the Railroad as shall be designated by the Vendor upon any sale, lease or other disposal of all or any part of the Equipment by the Vendor. At the option of the Vendor, the Vendor may keep the Equipment on any of the lines or premises of the Railroad until the Vendor shall have leased, sold or otherwise disposed of the same, and for such purpose the Railroad agrees to furnish, without charge for rent or storage, the necessary facilities at any point or points selected by the Vendor reasonably convenient to the Railroad and, at the Railroad's risk, to permit inspection of the Equipment by the Vendor, the Vendor's representatives and prospective purchasers and users. This agreement to deliver the Equipment and furnish facilities as hereinbefore provided is of the essence of the agreement between the parties, and, upon application to any court of equity having jurisdiction in the premises, the Vendor shall be entitled to a decree against the Railroad requiring specific performance hereof. The Railroad hereby expressly waives any and all claims against the Vendor and its agent or agents for damages of whatever nature in connection with any retaking of any unit of the Equipment in any reasonable manner.

At any time during the continuance of a Declaration of Default, the Vendor (after retaking possession of the Equipment as hereinbefore in this Article 17 provided) may at its election and upon such notice as is hereinafter set forth retain the Equipment in satisfaction of the entire indebtedness in respect of the Purchase Price of the Equipment and make such disposition thereof as the Vendor shall deem fit. Written notice of the Vendor's election to retain the Equipment shall be given to the Railroad by telegram or registered mail, addressed as provided in Article 21 hereof, and to any other persons to whom the law may require notice, within 30 days after such Declaration of Default. In the event that the Vendor should elect to retain the Equipment and no objection is made thereto within the 30-day period described in the second proviso below, all the Railroad's rights in the Equipment shall thereupon terminate and all payments made by the Railroad may be retained by the Vendor as compensation for the use of the Equipment by the Railroad; provided, however, that if the Railroad, before the expiration of the 30-day period described in the proviso below,

should pay or cause to be paid to the Vendor the total unpaid balance of the indebtedness in respect of the Purchase Price of the Equipment, together with interest thereon accrued and unpaid and all other payments due under this Agreement as well as expenses of the Vendor in retaking possession of, removing and storing the Equipment and the Vendor's reasonable attorneys' fees, then in such event absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Railroad; provided, further, that if the Railroad or any other persons notified under the terms of this paragraph object in writing to the Vendor within 30 days from the receipt of notice of the Vendor's election to retain the Equipment, then the Vendor may not so retain the Equipment, but shall sell, lease or otherwise dispose of it or continue to hold it pending sale, lease or other disposition as hereinafter provided or as may otherwise be permitted by law. If the Vendor shall have given no notice to retain as hereinabove provided or notice of intention to dispose of the Equipment in any other manner, it shall be deemed to have elected to sell the Equipment in accordance with the provisions of this Article 17.

At any time during the continuance of a Declaration of Default, the Vendor, with or without retaking possession thereof, at its election and upon reasonable notice to the Railroad and to any other persons to whom the law may require notice of the time and place, may sell the Equipment, or any unit thereof, free from any and all claims of the Railroad or any other party claiming from, through or under the Railroad, at law or in equity, at public or private sale and with or without advertisement as the Vendor may determine; provided, however, that if, prior to such sale and prior to the making of a contract for such sale, the Railroad should tender full payment of the total unpaid balance of the indebtedness in respect of the Purchase Price of the Equipment, together with interest thereon accrued and unpaid and all other payments due under this Agreement as well as expenses of the Vendor in retaking possession of, removing, storing, holding and preparing the Equipment for, and otherwise arranging for, the sale and the Vendor's reasonable attorneys' fees, then in such event absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Railroad. The proceeds of such sale, less the attorneys' fees and any other expenses incurred by the Vendor in retaking possession of, removing, storing,

holding, preparing for sale and selling the Equipment, shall be credited on the amount due to the Vendor under the provisions of this Agreement.

Any sale hereunder may be held or conducted at such place or places and at such time or times as the Vendor may specify, in one lot and as an entirety or in separate lots and without the necessity of gathering at the place of sale the property to be sold, and in general in such manner as the Vendor may determine. The Vendor or the Railroad may bid for and become the purchaser of the Equipment, or any unit thereof, so offered for sale. The Railroad shall be given written notice of such sale not less than ten days prior thereto, by telegram or registered mail addressed to the Railroad as provided in Article 21 hereof. If such sale shall be a private sale (which shall be deemed to mean only a sale where an advertisement for bids has not been published in a newspaper of general circulation or a sale where less than 40 railroads have been solicited in writing to submit bids), it shall be subject to the right of the Railroad to purchase or provide a purchaser, within ten days after notice of the proposed sale price, at the same price offered by the intending purchaser or a better price. In the event that the Vendor shall be the purchaser of the Equipment, it shall not be accountable to the Railroad (except to the extent of surplus money received as hereinafter provided in this Article 17), and in payment of the purchase price therefor the Vendor shall be entitled to have credited on account thereof all or any part of the sums due to the Vendor from the Railroad hereunder. From and after the date of any such sale, the Railroad shall pay to the Vendor the per diem interchange for each unit of Equipment which shall not have been assembled, as hereinabove provided, by the date of such sale for each day from the date of such sale to the date of delivery to the Purchaser at such sale.

Each and every power and remedy hereby specifically given to the Vendor shall be in addition to every other power and remedy hereby specifically given or now or hereafter existing at law or in equity, and each and every power and remedy may be exercised from time to time and simultaneously and as often and in such order as may be deemed expedient by the Vendor. All such powers and remedies shall be cumulative, and the exercise of one shall not be deemed a waiver of the right to exercise any other or others. No delay or omission of the Vendor in the exercise of any such power or

remedy and no renewal or extension of any payments due hereunder shall impair any such power or remedy or shall be contrued to be a waiver of any default or an acquiescence therein. Any extension of time for payment hereunder or other indulgence duly granted to the Railroad shall not otherwise alter or affect the Vendor's rights or the Railroad's obligations hereunder. The Vendor's acceptance of any payment after it shall have become due hereunder shall not be deemed to alter or affect the Railroad's obligations or the Vendor's rights hereunder with respect to any subsequent payments or default therein.

If, after applying all sums of money realized by the Vendor under the remedies herein provided, there shall remain any amount due to it under the provisions of this Agreement, the Railroad shall pay the amount of such deficiency to the Vendor upon demand, together with interest from the date of such demand to the date of payment by the Railroad at the rate per annum set forth in Article 4 hereof applicable to amounts remaining unpaid after becoming due and payable. If the Railroad shall fail to pay such deficiency, the Vendor may bring suit therefor and shall be entitled to recover a judgment therefor against the Railroad. If, after applying as aforesaid all sums realized by the Vendor, there shall remain a surplus in the possession of the Vendor, such surplus shall be paid to the Railroad.

The Railroad will pay all reasonable expenses, including attorneys' fees, incurred by the Vendor in enforcing its remedies under the terms of this Agreement. In the event that the Vendor shall bring any suit to enforce any of its rights hereunder and shall be entitled to judgment, then in such suit the Vendor may recover reasonable expenses, including attorneys' fees, and the amount thereof shall be included in such judgment.

The foregoing provisions of this Article 17 are subject in all respects to all mandatory legal requirements at the time in force and applicable thereto.

Article 18. Applicable State Laws. Any provision of this Agreement prohibited by any applicable law of any jurisdiction (which is not overridden by applicable federal law) shall as to such jurisdiction be ineffective, without modifying the remaining provisions of this Agreement. Where, however, the conflicting provisions of any such applicable

law may be waived, they are hereby waived by the Railroad to the full extent permitted by law, it being the intention of the parties hereto that this Agreement shall be deemed to be a conditional sale and enforced as such.

Except as otherwise provided in this Agreement, the Railroad, to the full extent permitted by law, hereby waives all statutory or other legal requirements for any notice of any kind, notice of intention to take possession of or to sell or lease the Equipment, or any unit thereof, and any other requirements as to the time, place and terms of the sale or lease thereof, any other requirements with respect to the enforcement of the Vendor's rights under this Agreement and any and all rights of redemption.

ARTICLE 19. Recording. The Railroad will cause this Agreement, any assignments hereof and any amendments or supplements hereto or thereto to be filed and recorded with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act; and the Railroad will from time to time do and perform any other act and will execute, acknowledge, deliver, file, register, deposit and record any and all further instruments required by law or reasonably requested by the Vendor for the purpose of proper protection, to the satisfaction of counsel for the Vendor, of its title to the Equipment and its rights under this Agreement or for the purpose of carrying out the intention of this Agreement; and the Railroad will promptly furnish to the Vendor certificates or other evidence of such filing, registering, depositing and recording satisfactory to the Vendor.

ARTICLE 20. Payment of Expenses. The Railroad will pay all reasonable costs and expenses (other than the fees and expenses of counsel for any Builder) incident to this Agreement and the first assignment of this Agreement, and any instrument supplemental or related hereto or thereto, including all fees and expenses of counsel for the first assignee of this Agreement, and all reasonable costs and expenses in connection with the transfer by any party of interests acquired in such first assignment. If the first assignee is not an agent, such assignee may appoint a bank or trust company located in either the Borough of Manhattan, City and State of New York, or Chicago, Illinois, having capital and surplus aggregating at least $40,000,000 to act as agent on its behalf to hold all the right, title and interests of the Builders under this Agreement assigned

to it, all upon and subject to the terms and conditions provided for in a written agreement to be entered into by the first assignee and such agent in form and substance satisfactory to the first assignee and such agent; and the Railroad hereby agrees to pay all reasonable costs and expenses of such Agent. Prior to appointing such an agent, the assignee shall consult with the Railroad and shall give reasonable consideration to the recommendations of the Railroad as to the bank or trust company to be appointed.

ARTICLE 21. Notice. Any notice hereunder to any of the parties designated below shall be deemed to be properly served if delivered or mailed to it at its chief place of business at the following specified addresses:

(a) to the Railroad, at 80 East Jackson Street, Chicago, Illinois 60604, attention of R. W. Harper, Vice President-Finance.

(b) to a Builder, at its address specified in Item 1 of Schedule A hereto, and

(c) to any assignee of the Vendor or of the Railroad, at such address as may have been furnished in writing to each of the other parties hereto by such assignee,

or at such other address as may have been furnished in writing by such party to the other parties to this Agreement.

ARTICLE 22. Article Heading; Effect and Modification of Agreement. All article headings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

This Agreement, including the Schedules hereto, exclusively states the rights of the Vendor and the Railroad with respect to the Equipment and supersedes all other agreements, oral or written, with respect to the Equipment. No variation or modification of this Agreement and no waiver of any of its provisions or conditions shall be valid unless in writing and signed by duly authorized officers of the Vendor and the Railroad.

ARTICLE 23. Law Governing. The Railroad warrants that its chief place of business and its chief executive offices are located in the State of Illinois. The terms

of this Agreement and all rights and obligations hereunder shall be governed by the laws of the State of Illinois; provided, however, that the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act and such additional rights arising out of the filing, recording or deposit hereof, if any, and of any assignment hereof as shall be conferred by the laws of the several jurisdictions in which this Agreement or any assignment hereof shall be filed, recorded or deposited.

ARTICLE 24. Execution. This Agreement may be executed in any number of counterparts, and such counterparts together shall constitute but one and the same contract. It shall not be necessary that any counterpart be signed by all the parties so long as any counterpart be signed by the Railroad and one or more Builders. If this Agreement is assigned by any Builder, the original counterpart of this Agreement shall be deemed to be the counterpart executed by such Builder and delivered to such assignee. Each Builder shall be bound hereunder, notwithstanding the failure of any other Builder to execute and deliver this Agreement, or perform its obligations hereunder. Although this Agreement is dated, for convenience, as of the date first set forth above, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

IN WITNESS WHEREOF, the parties hereto, each pursuant to due corporate authority, have caused this instrument to be executed in their respective corporate names by their officers, thereunto duly authorized, and their respective corporate seals to be hereunto affixed, duly attested, all as of the date first above written.

GENERAL MOTORS CORPORATION
(Electro-Motive Division),

by

_____
Vice President

[Corporate Seal]

Attest:

_____
Assistant Secretary

FMC CORPORATION,

by

[Corporate Seal] _____ Vice President

Attest:

_____
Assistant Secretary

PULLMAN INCORPORATED
(Pullman-Standard division),

by _____ Vice President

[Corporate Seal]

Attest:

_____
Assistant Secretary

GENERAL ELECTRIC COMPANY,

by

_____
Manager-Marketing,
Locomotive Products Department

[Corporate Seal]

Attest:

_____
Attesting Secretary

PACCAR INC,

by

_____ Vice President

[Corporate Seal]

Attest:

_____
Assistant Secretary

ACF INDUSTRIES, INCORPORATED,

by

_____
Vice President

[Corporate Seal]

Attest:

_____
Assistant Secretary

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY,

by

Vice President-Finance

[Corporate Seal]

Attest:

Assistant Secretary

STATE OF ILLINOIS,)
) ss.:
COUNTY OF COOK,)

On this day of 1975, before me personally appeared , to me personally known, who, being by me duly sworn, says that he is a Vice President of GENERAL MOTORS CORPORATION (Electro-Motive Division), that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

_____
Notary Public

[Notarial Seal]

My Commission Expires

STATE OF ILLINOIS,)
) ss.:
COUNTY OF COOK,)

On this day of 1975, before me personally appeared , to me personally known, who, being by me duly sworn, says that he is a Vice President of FMC CORPORATION, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

_____
Notary Public

[Notarial Seal]

My Commission Expires

STATE OF ILLINOIS,)
) ss.:
COUNTY OF COOK,)

On this 3rd day of February 1975, before me personally appeared Thomas P. Glaser, to me personally known, who, being by me duly sworn, says that he is a Vice President of PULLMAN INCORPORATED (Pullman-Standard division), that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Nellie E. Zink
Notary Public

[Notarial Seal]

My Commission Expires May 7, 1978

COMMONWEALTH OF PENNSYLVANIA,)
) ss.:
COUNTY OF ERIE,)

On this day of 1975, before me personally appeared , to me personally known, who, being by me duly sworn, says that he is Manager-Marketing, Locomotive Products Department, of GENERAL ELECTRIC COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Notary Public

[Notarial Seal]

My Commission Expires

STATE OF WASHINGTON,)
) ss.:
COUNTY OF KING,)

On this day of 1975, before me personally appeared , to me personally known, who, being by me duly sworn, says that he is a Vice President of PACCAR INC, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

_____
Notary Public

[Notarial Seal]

My Commission Expires

STATE OF NEW YORK,)
) ss.:
COUNTY OF NEW YORK,)

On this day of 1975, before me personally appeared , to me personally known, who, being by me duly sworn, says that he is a Vice President of ACF INDUSTRIES, INCORPORATED, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

_____
Notary Public

[Notarial Seal]

My Commission Expires

STATE OF ILLINOIS,)
) ss.:
COUNTY OF COOK,)

On this 31st day of January 1975, before me personally appeared R. W. HARPER, to me personally known, who, being by me duly sworn, says that he is a Vice President of THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

E. M. Arrequin
Notary Public

[Notarial Seal]

My Commission Expires
FEBRUARY 1, 1977

SCHEDULE A

Item 1: (a) General Motors Corporation (Electro-Motive Division), a Delaware corporation, La Grange, Illinois 60525.

(b) FMC Corporation, a Delaware corporation, 4700 Northwest Front Avenue, Portland, Oregon 97210.

(c) Pullman Incorporated (Pullman Standard division), a Delaware corporation, 200 South Michigan Avenue, Chicago, Illinois 60604.

(d) General Electric Company, a New York corporation, 2901 East Lake Road, Erie, Pennsylvania 16501.

(e) PACCAR Inc, a Delaware corporation, 1400 North 4th Street, Renton, Washington 98055.

(f) ACF Industries, Incorporated, a New Jersey corporation, 750 Third Avenue, New York, New York 10017.

Item 2: (a) (General Motors Corporation (Electro-Motive Division)): The Builder warrants that the Equipment will be built in accordance with the Specifications and the standards and requirements set forth in Article 2 of the Conditional Sale Agreement to which this Schedule is attached (hereinafter called the Agreement) and warrants that the Equipment will be free from defects in material (except as to specialties incorporated therein which were specified by the Railroad and not manufactured by the Builder) and workmanship under normal use and service; the Builder's obligations under this paragraph being limited to making good at its plant any part or parts of any unit of the Equipment which, within two years after the delivery of such unit to the Railroad or before such unit has been in scheduled service 250,000 miles (whichever event shall first occur), shall be returned to the Builder with transportation charges

prepaid and which the Builder's examination shall disclose to its satisfaction to have been thus defective.

This warranty of the Builder shall not apply (i) to any locomotive components which shall have been repaired or altered unless repaired or altered by the Builder or its authorized service representatives, if, in its judgment, such repairs or alterations affect the stability of a unit of the Equipment or (ii) to any unit of the Equipment which has been subject to misuse, negligence or accident.

This warranty is expressly in lieu of all other warranties expressed or implied, including any implied warranty of merchantability or fitness for a particular purpose, and of all other obligations or liabilities on the part of the Builder, except for its obligations under Articles 2, 3, 4 and 14 of the Agreement. The Builder neither assumes nor authorizes any person to assume for it any other liability in connection with the construction and delivery of the Equipment, except as aforesaid.

The Builder further agrees with the Railroad that neither the inspection as provided in Article 3 of the Agreement, nor any examination, nor the acceptance of any units of the Equipment as provided in Article 3 of the Agreement shall be deemed a waiver or a modification by the Railroad of any of its rights hereunder.

The Builder further agrees to hold harmless the Railroad from claims, costs and liability to the Builder's employees arising out of and in the course of their employment and while on the Railroad's premises or equipment except when traveling as revenue passengers on the Railroad's trains, and except that the Builder shall not be liable for the Railroad's sole negligence.

The Builder reserves the right to make change

in the design of, or add any improvements to, units of the Equipment at any time without incurring any obligation to make similar changes or additions in respect of units of Equipment previously delivered to the Railroad.

(b) (FMC Corporation): The Builder warrants that the Equipment will be built in accordance with the Specifications and the standards and conditions set forth in Article 2 of the Conditional Sale Agreement to which this Schedule is attached (hereinafter called the Agreement), and, except in cases of articles and materials specified by the Railroad and not manufactured by the Builder, warrants the Equipment to be free from defects in material and workmanship under normal use and service, the liability of the Builder under this warranty being limited, as the Railroad may elect: (i) to repair of the defect at the Builder's plant at Portland, Oregon; or (ii) to replacement of the defective part; or (iii) to the cost of repair or replacement according to the AAR Code of Rules Governing Condition of and Repairs to Freight and Passenger Cars with Interchange of Traffic.

The foregoing warranty of the Builder shall begin at the time of delivery of a unit of Equipment to the Railroad and terminate one year after such delivery. <u>This warranty is expressly in lieu of all other warranties expressed or implied on the part of the Builder</u>, except for the patent indemnification included in Article 14 of of the Agreement and except as hereinafter provided in this Schedule A, and the Builder neither assumes nor authorizes any person to assume for it any other warranty liability in connection with the construction and delivery of the Equipment.

The Builder further agrees that the Railroad shall have the right to repair the Equipment furnished by the Builder of its manufacture and that repair parts for such equipment may be made by, or for, the Railroad or purchased

in the open market, as the Railroad may determine; and it is agreed the Equipment may be repaired by other railroads no matter where the repair parts are obtained. This agreement includes the right on the part of the Railroad to purchase repair parts for such Equipment in anticipation of breakage, instead of waiting until the breakage actually occurs before ordering the repair parts.

The Builder's patent indemnification set forth in Article 14 of the Agreement does not apply to designs, systems, processes and formulae utilized by the Builder in or about the construction of the Equipment, or any unit thereof, as the result of specification by the Railroad, other than for patents or other rights controlled by the Builder; and the Railroad shall indemnify and save harmless the Builder and/or manufacturer and the Vendor for the use of any designs, systems, processes and formulae utilized by the Builder in or about the construction of the Equipment, or any unit thereof, as the result of specification by the Railroad, as against any patent infringement claims or damages as specified in said Article 14, other than for patents or other rights controlled by the Builder.

The Builder will hold harmless the Railroad from claims, costs and liability to Builder's employees arising out of and in the course of their employment and while on the Railroad's premises or equipment except when traveling as revenue passengers on the Railroad's trains.

(c) (Pullman Incorporated (Pullman-Standard division)): The Builder warrants that the Equipment will be built in accordance with the Specifications and the standards and requirements set forth in Article 2 of the Conditional Sale Agreement to which this Schedule is attached (hereinafter called the Agreement) and warrants the Equipment will be free from defects in material (except as to specialties incorporated therein specified by the Railroad

and not manufactured by the Builder) and workmanship and design under normal use and service, the Builder's obligation under this Item 2 being limited to making good at its plant any part or parts of any unit of Equipment which shall, within one year after the delivery of such unit of Equipment to the Railroad, be returned to the Builder with transportation charges prepaid and which examination by the Builder shall disclose to its satisfaction to have been thus defective.

The foregoing warranty is expressly in lieu of all other warranties, expressed or implied, including any implied merchantability or fitness for a particular purpose, and of all other obligations or liabilities on the part of the Builder, except for its obligations under Articles 2, 3, 4 and 14 of the Agreement, and the Builder neither assumes nor authorizes any person to assume for it any other liability in connection with the construction of the Equipment and delivery of the Equipment, except as aforesaid. It is further understood and agreed that in no event shall the Builder be liable for indirect or consequential damages of any kind.

The Builder further agrees with the Railroad that neither the inspection provided in Article 3 of the Agreement, nor any examination, nor the acceptance of any units of the Equipment as provided in said Article 3 shall be deemed a waiver or a modification by the Railroad of any of its rights under this Item 2.

(d) (General Electric Company): The Builder warrants that the Equipment will be built in accordance with the Specifications and the standards and requirements referred to in Article 2 of the Conditional Sale Agreement to which this Schedule is attached (hereinafter called the Agreement) and warrants the equipment will be free from defects in material (except as to specialties incorporated therein that are not of the Builder's own specification or design) and workmanship under normal use

and service; the Builder's obligations under this paragraph being limited to making good at its plant any part or parts of any unit of the Equipment which, within one year after the delivery of such unit to the Railroad, shall be returned to the Builder with transportation charges prepaid and which the Builder's examination shall disclose to its satisfaction to have been thus defective.

This warranty of the Builder shall not apply (i) to any locomotive components which shall have been repaired or altered, unless repaired or altered by the Builder or its authorized service representatives, if, in its judgment, such repairs or alterations affect the stability of a unit of the Equipment or (ii) to any unit of the Equipment which has been subject to misuse, negligence or accident.

THIS WARRANTY IS EXPRESSLY IN LIEU OF ALL OTHER WARRANTIES EXPRESSED OR IMPLIED, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND OF ALL OTHER OBLIGATIONS OR LIABILITIES ON THE PART OF THE BUILDER, EXCEPT FOR ITS OBLIGATIONS UNDER THE AGREEMENT. THE BUILDER NEITHER ASSUMES NOR AUTHORIZES ANY PERSON TO ASSUME FOR IT ANY OTHER LIABILITY IN CONNECTION WITH THE CONSTRUCTION AND DELIVERY OF THE EQUIPMENT, EXCEPT AS AFORESAID.

In no event shall the Builder be liable for special or consequential damages. The Builder's liability on any claim of any kind including negligence, or for any loss or damage arising out of, connected with, or resulting from, the Agreement, or from the performance or breach thereof, or from the manufacture, sale, delivery, resale, repair or use of any unit of the Equipment covered by, or furnished under, the Agreement, shall in no case exceed the Purchase Price of such unit of the Equipment involved in the claim, and upon the expiration of the warranty period specified above all such liability shall terminate. The Builder shall have no liability

for any unit of the Equipment or part thereof which becomes defective by reason of improper storage or application, misuse, negligence, accident or improper operation, maintenance, repairs or alterations on the part of the Railroad or any third party other than the Builder. The foregoing warranty shall constitute the sole remedy of the Railroad and the sole liability of the Builder.

It is understood that the Builder has the right to make changes in the design of, or to add improvements to units of the Equipment at any time without incurring any obligations to install, at the Builder's expense, the same or other locomotives sold by Builder.

The Builder further agrees with the Railroad that neither the inspection as provided in the Agreement, nor any examination, nor the acceptance of any units of the Equipment as provided in the Agreement shall be deemed a waiver or a modification by the Railroad of any of its rights under this Item 2.

(e) (PACCAR Inc): The Builder warrants that the Equipment will be built in accordance with the requirements, specifications and standards set forth in Article 2 of the Conditional Sale Agreement to which this Schedule is attached (hereinafter called the Agreement) and, except in cases of articles and materials specified by the Railroad and not manufactured by the Builder, warrants the Equipment to be free from defects in material and workmanship under normal use and service, the liability of the Builder under this warranty being limited, as the Railroad may elect: (i) to repair of the defects at the Builder's plant; or (ii) to replacement of a defective part; or (iii) to the cost of repair or replacement according to the AAR Code of Rules Governinig Condition of and Repairs to Freight and Passenger Cars with Interchange of Traffic. The Builder shall be given reasonable opportunity to verify any claim of defects in workmanship or materials.

The foregoing warranty of the Builder shall begin at the time of delivery of a unit of the Equipment to the Railroad and terminate two years after such delivery. THE BUILDER MAKES NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. The Railroad's right under the foregoing warranty shall be its sole and exclusive remedy and the Builder will have no liability for lost profit or for indirect, incidental, consequential or commercial losses. This warranty is expressly in lieu of all other warranties express or implied on the part of the Builder, except for the patent indemnification included in Article 14 of this Agreement. The Builder neither assumes nor authorizes any person to assume for it any other warranty liability in connection with the construction and delivery of the Equipment.

The Builder further agrees with the Railroad that neither the inspection as provided in Article 3 of the Agreement nor any examination nor the acceptance of any units of the Equipment as provided in said Article 3 shall be deemed a waiver or a modification by the Railroad of any of its rights under this Item 2.

The Builder will hold harmless the Railroad from claims, costs and liability to the Builder's employees arising out of and in the course of their employment and while on the Railroad's premises or equipment except when traveling as revenue passengers on the Railroad's trains.

(f) (ACF Industries, Incorporated): The Builder warrants that the Equipment will be built in accordance with the requirements, specifications and standards set forth in Article 2 of the Conditional Sale Agreement to which this Schedule is attached (hereinafter called this Agreement) and warrants the Equipment will be free from defects in material (except as to specialties incorporated therein which were specified or supplied by the Railroad and not manufactured by the Builder) and

workmanship under normal use and service, the Builder's obligation under this Item 2 being limited to making good at its factory any part or parts of any unit of the Equipment which shall be returned to the Builder with transportation charges prepaid, within one year after the delivery of such unit to the Railroad, and which the Builder's examination shall disclose to its satisfaction to have been thus defective. The foregoing warranty of the Builder is expressly in lieu of all other warranties, express or implied, including any implied warranty of merchantability or fitness for a particular purpose, and of all other obligations or liabilities under Articles 2, 3, 4 and 14 of the Agreement, and the Builder neither assumes nor authorizes any person to assume for it any other liability in connection with the construction and delivery of the Equipment except as aforesaid.

The Builder further agrees that neither the inspection as provided in Article 3 of this Agreement nor any examination nor the acceptance of any units of the Equipment as provided in said Article 3 shall be deemed a waiver or a modification by the Owner-Trustee of any of its rights under this Item 2.

SCHEDULE B

Builder	Type	Quantity	Builder's Specifications	Builder's Plant	Railroad's Numbers (inclusive)	Unit Base Price	Total Base Price	Time and Place of Delivery
(a) General Motors Corporation (Electro-Motive Divison)	2300 h.p. GP-39-2 locomotive	29	8075	McCook, Illinois	3627-3654	$355,200	$10,300,800	Prior to April 30, 1975, at Builder's Plant
(b) FMC Corporation	60' 9" 100-ton box car with roller bearings AAR Mechanical Designation XM	400	Job 17620	Portland, Oregon	611000-611399	36,000	14,400,000	March-April, 1975, at Builder's Plant
(c) Pullman Incorporated (Pullman-Standard division)	60' 9" 100-ton box car with roller bearings; AAR Mechanical Designation XL	216	Lot Number 9783	Bessemer, Alabama	611400-611615	33,100	7,149,600	April-May, 1975, at Bessemer, Ala.

SCHEDULE B (Cont'd)

Builder	Type	Quantity	Builder's Specifications	Builder's Plant	Railroad's Numbers (inclusive)	Unit Base Price	Total Base Price	Time and Place of Delivery
(d) General Electric Company	U-36-C, 3600 h.p. locomotive; AAR Mechanical Designation C-C	6	3690E	Erie, Pennsylvania	8794-8799	$436,300	$ 2,617,800	Prior to March 1, 1975, at Erie, Pa.
(e) PACCAR Inc	52' 6", 70-ton insulated box car with roller bearing trucks, cushioned underframe, dual Air'Pak load dividers, 16' doors;	100	PC-339, as revised	Renton, Washington	522800-522899	37,100	3,710,000	Prior to March 1, 1975, at Builder's Plant
(f) ACF Industries, Incorporated	4600 cu. ft., 100-ton covered hopper car with roller bearing trucks and interior coating	400	11-01312, dated November 11, 1974	Huntington, West Virginia	314800-315199	30,000	12,000,000	February-March, 1975, at Russell, Ky.